

## Occupational Safety and Health Admin., Labor

## § 1903.2

(b) The decision revoking the determination shall also reflect the Assistant Secretary's determination that concurrent Federal enforcement and standards authority will be reinstated within the State for a reasonable time until he has withdrawn his approval of the plan, or any separable portion thereof, pursuant to part 1955 of this chapter or he has determined that the State has met the criteria for an 18(e) determination pursuant to the applicable procedures of this subpart.

### § 1902.53 Publication of decisions.

All decisions on the reconsideration of an affirmative 18(e) determination shall be published in the FEDERAL REGISTER.

## PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

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AUTHORITY: Sections 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; Secretary of Labor's Order No. 1-90 (55 FR 9033) or 6-96 (62 FR 111), as applicable.

Section 1903.7 also issued under 5 U.S.C. 553.

SOURCE: 36 FR 17850, Sept. 4, 1971, unless otherwise noted.

### § 1903.1 Purpose and scope.

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 *et seq.*, 29 U.S.C. 651 *et seq.*) requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under section 20(b), also authorizes the Secretary of Health, Education, and Welfare to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this part 1903 is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Act. In situations where this part 1903 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Secretary or his designee determines that an alternative course of action would better serve the objectives of the Act.

### § 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.

(a)(1) Each employer shall post and keep posted a notice or notices, to be

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furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(2) Where a State has an approved poster informing employees of their protections and obligations as defined in §1952.10 of this chapter, such poster, when posted by employers covered by the State plan, shall constitute compliance with the posting requirements of section 8(c)(1) of the Act. Employers whose operations are not within the issues covered by the State plan must comply with paragraph (a)(1) of this section.

(3) Reproductions or facsimiles of such Federal or State posters shall constitute compliance with the posting requirements of section 8(c)(1) of the Act where such reproductions or facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 pt.

(b) *Establishment* means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such es-

tablishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as longshoremen, traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(c) Copies of the Act, all regulations published in this chapter and all applicable standards will be available at all Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

[36 FR 17850, Sept. 4, 1971, as amended at 39 FR 39036, Nov. 5, 1974]

#### § 1903.3 Authority for inspection.

(a) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a

reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education, and Welfare under section 8 of the Act and pursuant to this part 1903 shall not affect the authority of any State to conduct inspections in accordance with agreements and plans under section 18 of the Act.

(b) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

**§ 1903.4 Objection to inspection.**

(a) Upon a refusal to permit the Compliance Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with §1903.3 or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with §1903.8, the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall im-

mediately report the refusal and the reason therefor to the Area Director. The Area Director shall consult with the Regional Solicitor, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

(1) When the employer's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed;

(2) When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;

(3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) With the approval of the Regional Administrator and the Regional Solicitor, compulsory process may also be obtained by the Area Director or his designee.

(d) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including *ex parte* application for an inspection warrant or its equivalent. *Ex parte* inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

[45 FR 65923, Oct. 3, 1980]

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### § 1903.5 Entry not a waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

### § 1903.6 Advance notice of inspections.

(a) Advance notice of inspections may not be given, except in the following situations:

(1) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(2) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(3) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

(4) In other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections may be given only if authorized by the Area Director, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Safety and Health Officer without such authorization if the Area Director is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See §1903.8(b) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspec-

tion. An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer promptly to inform such representative of the inspection, may be subject to citation and penalty under section 17(c) of the Act. Advance notice in any of the situations described in paragraph (a) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(c) The Act provides in section 17(f) that any person who gives advance notice of any inspection to be conducted under the Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both.

### § 1903.7 Conduct of inspections.

(a) Subject to the provisions of §1903.3, inspections shall take place at such times and in such places of employment as the Area Director or the Compliance Safety and Health Officer may direct. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in §1903.3 which they wish to review. However, such designation of records shall not preclude access to additional records specified in §1903.3.

(b) Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See §1903.9 on trade secrets.) As used herein, the term *employ other reasonable investigative techniques* includes, but is not limited to, the use of devices to measure employee

exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

(c) In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(e) At the conclusion of an inspection, the Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

(f) Inspections shall be conducted in accordance with the requirements of this part.

[36 FR 17850, Sept. 14, 1971, as amended at 47 FR 6533, Feb. 12, 1982; 47 FR 55481, Dec. 10, 1982]

#### **§ 1903.8 Representatives of employers and employees.**

(a) Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different em-

ployer and employee representative may accompany the Compliance Safety and Health Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this section. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

(d) Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of §1903.9(d). With regard to 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 Compliance Safety and Health Officer in areas containing such information.

#### **§ 1903.9 Trade secrets.**

(a) Section 15 of the Act provides: "All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code

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shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets." Section 15 of the Act is considered a statute within the meaning of section 552(b)(3) of title 5 of the United States Code, which exempts from the disclosure requirements matters that are "specifically exempted from disclosure by statute."

(b) Section 1905 of title 18 of the United States Code provides: "Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both; and shall be removed from office or employment."

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential—trade secret" and shall not be disclosed ex-

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cept in accordance with the provisions of section 15 of the Act.

(d) Upon the request of an employer, any authorized representative of employees under §1903.8 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Compliance Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

### § 1903.10 Consultation with employees.

Compliance Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Compliance Safety and Health Officer.

### § 1903.11 Complaints by employees.

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Area Director or to a Compliance Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Area Director or Compliance Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department of Labor.

(b) If upon receipt of such notification the Area Director determines that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable

grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Compliance Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) Section 11(c)(1) of the Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act."

(Approved by the Office of Management and Budget under control number 1218-0064)

[36 FR 17850, Sept. 4, 1973, as amended at 54 FR 24333, June 7, 1989]

**§ 1903.12 Inspection not warranted; informal review.**

(a) If the Area Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under § 1903.11, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Assistant Regional Director and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Assistant Regional Director and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Assistant Regional Director, at his discretion, may hold an informal con-

ference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Assistant Regional Director shall affirm, modify, or reverse the determination of the Area Director and furnish the complaining party and the employer and written notification of this decision and the reasons therefor. The decision of the Assistant Regional Director shall be final and not subject to further review.

(b) If the Area Director determines that an inspection is not warranted because the requirements of § 1903.11(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of § 1903.11(a).

**§ 1903.13 Imminent danger.**

Whenever and as soon as a Compliance Safety and Health Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and that he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of section 13(a) of the Act. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Safety and Health Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

**§ 1903.14 Citations; notices of de minimis violations; policy regarding employee rescue activities.**

(a) The Area Director shall review the inspection report of the Compliance Safety and Health Officer. If, on the basis of the report the Area Director believes that the employer has violated a requirement of section 5 of the

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Act, of any standard, rule or order promulgated pursuant to section 6 of the Act, or of any substantive rule published in this chapter, he shall, if appropriate, consult with the Regional Solicitor, and he shall issue to the employer either a citation or a notice of de minimis violations which have no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this section after the expiration of 6 months following the occurrence of any alleged violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

(c) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under §1903.11(a) or a notification of violation under §1903.11(c), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

(d) After an inspection, if the Area Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under §1903.11(a) or a notification of violation under §1903.11(c), the informal review procedures prescribed in §1903.12(a) shall be applicable. After considering all views presented, the Assistant Regional Director shall affirm the determination of the Area Director, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The Assistant Regional Director shall furnish the complaining party and the employer with written notification of his determination and the

reasons therefor. The determination of the Assistant Regional Director shall be final and not subject to review.

(e) Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Review Commission.

(f) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

(1)(i) Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and

(ii) The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(2)(i) Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and

(ii) The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(3)(i) Such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and

(ii) Such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and

(iii) The employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

(4) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice



that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

[36 FR 17850, Sept. 4, 1971, as amended at 59 FR 66613, Dec. 27, 1994]

**§ 1903.14a Petitions for modification of abatement date.**

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph (c)(1) of this section and a certification of the date upon which such posting and service was made.

(c) A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted or served pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) Where any petition is objected to by the Secretary or affected employees, the petition, citation, and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c)(4) of this section.

[40 FR 6334, Feb. 11, 1975; 40 FR 11351, Mar. 11, 1975]

**§ 1903.15 Proposed penalties.**

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty under section 17 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed

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penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

**§ 1903.16 Posting of citations.**

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see § 1903.2(b)), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see § 1903.2(b)), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other

material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under § 1903.17 shall not affect his posting responsibility under this section unless and until the Review Commission issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

**§ 1903.17 Employer and employee contests before the Review Commission.**

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under section 10(c) of the Act, file a written notice with the Area Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days

of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

**§ 1903.18 Failure to correct a violation for which a citation has been issued.**

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall, if appropriate, consult with the Regional Solicitor, and he shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of such failure and of the additional penalty proposed under section 17(d) of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Review Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

(b) Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 10(b) of the Act, notify the Area Director in writing that he intends to contest such notification or proposed additional penalty before the Review Commission. Such notice of intention to contest shall be post-marked within 15 working days of the receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(c) Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notification,

the employer notifies the Area Director in writing that he intends to contest the notification or the proposed additional penalty before the Review Commission.

**§ 1903.19 Abatement verification.**

*Purpose.* OSHA's inspections are intended to result in the abatement of violations of the Occupational Safety and Health Act of 1970 (the OSH Act). This section sets forth the procedures OSHA will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(a) *Scope and application.* This section applies to employers who receive a citation for a violation of the Occupational Safety and Health Act.

(b) *Definitions*—(1) *Abatement* means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

(2) *Abatement date* means:

(i) For an uncontested citation item, the later of:

(A) The date in the citation for abatement of the violation;

(B) The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or

(C) The date established in a citation by an informal settlement agreement.

(ii) For a contested citation item for which the Occupational Safety and Health Review Commission (OSHRC) has issued a final order affirming the violation, the later of:

(A) The date identified in the final order for abatement; or

(B) The date computed by adding the period allowed in the citation for abatement to the final order date;

(C) The date established by a formal settlement agreement.

(3) *Affected employees* means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) *Final order date* means:

(i) For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;

(ii) For a contested citation item:

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(A) The thirtieth day after the date on which a decision or order of a commission administrative law judge has been docketed with the commission, unless a member of the commission has directed review; or

(B) Where review has been directed, the thirtieth day after the date on which the Commission issues its decision or order disposing of all or pertinent part of a case; or

(C) The date on which a federal appeals court issues a decision affirming the violation in a case in which a final order of OSHRC has been stayed.

(5) *Movable equipment* means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(c) *Abatement certification*. (1) Within 10 calendar days after the abatement date, the employer must certify to OSHA (the Agency) that each cited violation has been abated, except as provided in paragraph (c)(2) of this section.

(2) The employer is not required to certify abatement if the OSHA Compliance Officer, during the on-site portion of the inspection:

(i) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(ii) Notes in the citation that abatement has occurred.

(3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by paragraph (h) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

NOTE TO PARAGRAPH (c): Appendix A contains a sample Abatement Certification Letter.

(d) *Abatement documentation*. (1) The employer must submit to the Agency, along with the information on abatement certification required by paragraph (c)(3) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Agency indicates in the citation that such abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(e) *Abatement plans*. (1) The Agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

(2) The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

NOTE TO PARAGRAPH (e): Appendix B contains a Sample Abatement Plan form.

(f) *Progress reports*. (1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

(i) That periodic progress reports are required and the citation items for which they are required;

(ii) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;

(iii) Whether additional progress reports are required; and

(iv) The date(s) on which additional progress reports must be submitted.

(2) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

NOTE TO PARAGRAPH (f): Appendix B contains a Sample Progress Report form.

(g) *Employee notification*. (1) The employer must inform affected employees and their representative(s) about abatement activities covered by this

section by posting a copy of each document submitted to the Agency or a summary of the document near the place where the violation occurred.

(2) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

(i) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(ii) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the Agency.

(i) An employee or an employee representative must submit a request to examine and copy abatement documents within 3 working days of receiving notice that the documents have been submitted.

(ii) The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within 5 working days of receiving the request.

(4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Agency and that abatement documents are:

(i) Not altered, defaced, or covered by other material; and

(ii) Remain posted for three working days after submission to the Agency.

(h) *Transmitting abatement documents.* (1) The employer must include, in each submission required by this section, the following information:

(i) The employer's name and address;

(ii) The inspection number to which the submission relates;

(iii) The citation and item numbers to which the submission relates;

(iv) A statement that the information submitted is accurate; and

(v) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Agency receives the document is the date of submission.

(i) *Movable equipment.* (1) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites.

NOTE TO PARAGRAPH (i)(1): Attaching a copy of the citation to the equipment is deemed by OSHA to meet the tagging requirement of paragraph (i)(1) of this section as well as the posting requirement of 29 CFR 1903.16.

(2) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

NOTE TO PARAGRAPH (i)(2): Non-Mandatory Appendix C contains a sample tag that employers may use to meet this requirement.

(3) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

(i) For hand-held equipment, immediately after the employer receives the citation; or

(ii) For non-hand-held equipment, prior to moving the equipment within or between worksites.

(4) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this section when the information required by paragraph (i)(2) is included on the tag.

(5) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(6) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

(i) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the Agency;

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(ii) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(iii) The Commission issues a final order vacating the citation.

**APPENDICES TO §1903.19—ABATEMENT VERIFICATION**

NOTE: Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of this section.

**APPENDIX A TO SECTION 1903.19—SAMPLE ABATEMENT-CERTIFICATION LETTER (NON-MANDATORY)**

(Name), Area Director  
 U. S. Department of Labor—OSHA  
 Address of the Area Office (on the citation)  
 [Company's Name]  
 [Company's Address]

The hazard referenced in Inspection Number [insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on insert date by:

\_\_\_\_\_.

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_.

I attest that the information contained in this document is accurate.

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Typed or Printed Name

**APPENDIX B TO SECTION 1903.19—SAMPLE ABATEMENT PLAN OR PROGRESS REPORT (NONMANDATORY)**

(Name), Area Director  
 U. S. Department of Labor—OSHA  
 Address of Area Office (on the citation)

[Company's Name]  
 [Company's Address]

Check one:  
 Abatement Plan [ ]  
 Progress Report [ ]

Inspection Number \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_\_

Citation Number(s)\* \_\_\_\_\_

Item Number(s)\* \_\_\_\_\_

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1. ....	.....	.....
2. ....	.....	.....
3. ....	.....	.....
4. ....	.....	.....
5. ....	.....	.....
6. ....	.....	.....
7. ....	.....	.....

Date required for final abatement: \_\_\_\_\_  
 I attest that the information contained in this document is accurate.

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Typed or Printed Name

Name of primary point of contact for questions: [optional]

Telephone number: \_\_\_\_\_

\*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

APPENDIX C TO SECTION 1903.19—SAMPLE WARNING TAG (NONMANDATORY)

○

**WARNING:**

EQUIPMENT HAZARD  
CITED BY OSHA

EQUIPMENT CITED:  
\_\_\_\_\_  
\_\_\_\_\_

HAZARD CITED:  
\_\_\_\_\_  
\_\_\_\_\_

FOR DETAILED INFORMATION  
SEE OSHA CITATION POSTED AT:  
\_\_\_\_\_  
\_\_\_\_\_

BACKGROUND COLOR—ORANGE  
MESSAGE COLOR—BLACK

[62 FR 15337, Mar. 31, 1997]

**§ 1903.20 Informal conferences.**

At the request of an affected employer, employee, or representative of employees, the Assistant Regional Director may hold an informal con-

ference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference

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shall be subject to the rules of procedure prescribed by the Review Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Assistant Regional Director. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Assistant Regional Director. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in §1903.17.

[36 FR 17850, Sept. 4, 1971. Redesignated at 62 FR 15337, Mar. 31, 1997]

### § 1903.21 State administration.

Nothing in this part 1903 shall preempt the authority of any State to conduct inspections, to initiate enforcement proceedings or otherwise to implement the applicable provisions of State law with respect to State occupational safety and health standards in accordance with agreements and plans under section 18 of the Act and parts 1901 and 1902 of this chapter.

[36 FR 17850, Sept. 4, 1971. Redesignated at 62 FR 15337, Mar. 31, 1997]

### § 1903.22 Definitions.

(a) *Act* means the Williams-Steiger Occupational Safety and Health Act of 1970. (84 Stat. 1590 *et seq.*, 29 U.S.C. 651 *et seq.*)

(b) The definitions and interpretations contained in section 3 of the Act shall be applicable to such terms when used in this part 1903.

(c) *Working days* means Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

(d) *Compliance Safety and Health Officer* means a person authorized by the Occupational Safety and Health Administration, U.S. Department of Labor, to conduct inspections.

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(e) *Area Director* means the employee or officer regularly or temporarily in charge of an Area Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are authorized to act for such employee or officer. The latter authorizations may include general delegations of the authority of an Area Director under this part to a Compliance Safety and Health Officer or delegations to such an officer for more limited purposes, such as the exercise of the Area Director's duties under §1903.14(a). The term also includes any employee or officer exercising supervisory responsibilities over an Area Director. A supervisory employee or officer is considered to exercise concurrent authority with the Area Director.

(f) *Assistant Regional Director* means the employee or officer regularly or temporarily in charge of a Region of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibilities over the Assistant Regional Director. Such supervisory employee or officer is considered to exercise concurrent authority with the Assistant Regional Director. No delegation of authority under this paragraph shall adversely affect the procedures for independent informal review of investigative determinations prescribed under §1903.12 of this part.

(g) *Inspection* means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under §1903.11 (a) and (c), any reinspection, followup inspection, accident investigation or other inspection conducted under section 8(a) of the Act.

[36 FR 17850, Sept. 4, 1971, as amended at 38 FR 22624, Aug. 23, 1973. Redesignated at 62 FR 15337, Mar. 31, 1997]



**PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES**

Sec.

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- 1904.3 Keeping records for more than one agency.

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**Subpart E—Reporting Fatality, Injury and Illness Information to the Government**

- 1904.39 Reporting fatalities and multiple hospitalization incidents to OSHA.
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**Subpart G—Definitions**

1904.46 Definitions.

AUTHORITY: 29 U.S.C. 657, 658, 660, 666, 669, 673. Secretary of Labor's Order No. 3-2000 (65 FR 50017), and 5 U.S.C. 533.

SOURCE: 66 FR 6122, Jan. 19, 2001, unless otherwise noted.

**Subpart A—Purpose****§ 1904.0 Purpose.**

The purpose of this rule (Part 1904) is to require employers to record and report work-related fatalities, injuries and illnesses.

NOTE TO §1904.0: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.

**Subpart B—Scope**

NOTE TO SUBPART B: All employers covered by the Occupational Safety and Health Act (OSH Act) are covered by these Part 1904 regulations. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OSHA injury and illness records.

**§ 1904.1 Partial exemption for employers with 10 or fewer employees.**

(a) *Basic requirement.* (1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under §1904.41 or §1904.42. However, as required by §1904.39, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.