State of Illinois
Illinois Department of Labor

ILLINOIS STATE PLAN FIELD OPERATIONS MANUAL

ILLINOIS OSHA

Division of Occupational Safety and Health

FFY 27 V1

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IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 1: Introduction
Effective Date: 1 December 2020
Revised: 1 October 2025 **Signed:**

1-1 PURPOSE

This Field Operations Manual (FOM) is a comprehensive revision of the 2020 Field Operations Manual. It has been produced to conform to 820 ILCS 219, the Illinois Occupational Safety and Health Act, the Illinois Administrative Rules promulgated under the Act in Title 56, Chapter I, Subchapter B, Part 350, Health and Safety. The purpose of this FOM is to ensure operations are conducted in accordance with requirements of the Act and Administrative Rules as well as provide the IL OSHA team with procedures and guidance not contained within the Act and Administrative Rules.

1-2 SCOPE AND APPLICATION

This FOM applies to the Illinois Department of Labor, Division of Occupational Safety and Health, IL OSHA.

1-3 REVIEW AND UPDATE

This FOM is modular to allow individual chapters to be updated on a regular basis. It is ideal to conduct an annual review process with updates every October 1st. Any updates shall be approved by the Division Chief and accompanied by a notification and summary of change document that outlines specific updates.

1-4 DOCUMENT CONTROL

This FOM should be a "living" document. Implementation of strict document control is paramount to ensuring that team members are using the latest version. Team members should always access the most current, electronic version of this FOM. Members should not copy or store it locally. Printed copies of the FOM are uncontrolled and shall not be used as a definitive reference.

1-5 REQUIREMENTS, PROCEDURES, GUIDANCE

Herein, the following will be defined:

Requirement: A legal condition that cannot be modified or violated. No one in the Division has the authority to change a requirement. It is the law.

Procedure: A required step-by-step way to perform a task. These can be modified or violated on rare occasions subject to appropriate authority/discretion detailed in section 1-7.

Guidance: A suggested way of doing something. A best practice. Prior experience shows this way has been successful. The same as non-mandatory language in OSHA standards.

1-6 SPECIAL ORDERS

Certain procedures or guidance (or requirement in the case of a change in the law) may need to be updated or created throughout the year that need immediate implementation. In this case, the Division Chief can issue a Special Order ("SO"). SOs shall be numbered chronologically. For example, the first SO issued in 2025 would be 25-1, the next 25-2 and so on. All SOs will be added to this FOM when they become effective and the revision date of this FOM will change to reflect the effective date of the SO. All prior versions of this FOM will become obsolete. SOs may be rescinded by the Division Chief, rescinded and incorporated into a chapter in this FOM during an annual update, or remain as a SO indefinitely. SO shall be clearly designated as a requirement, procedure, or guidance as defined by the previous section.

The goal of a SO is to capture procedures or guidance for incorporation into this FOM so it remains the document of reference. E-mail or memorandum policies that can easily be forgotten or ignored should be discouraged. The authority/discretion on issuing a SO versus a simple e-mail memorandum lies with the Division Chief.

1-7 AUTHORITY/DISCRETION

Many IL OSHA operations are subject to legal requirements contained within the Act and Administrative Rules. The enforcement team has no authority/discretion to operate contrary to law. This FOM designates legally binding requirements through direct quote from the Act or Administrative rule in italics with quotes:

820 ILCS 219/20(a): "Every public employer must provide reasonable protection to the lives, health, and safety of its employees and must furnish to each of its employees employment and a workplace which are free from recognized hazards that cause or are likely to cause death or serious physical harm to its employees."

It may be necessary for procedures in this FOM to be modified or violated. If this is the case, it should be:

- Rare.
- On a specific, one-time situation.
- Involve low risk and high benefit.
- Authorized by a team member that has the authority/discretion to do so.
- Legal, ethical, cost-effective, and safe.
- Reported to the next level of leadership.
- Documented in the applicable case file diary sheet by the authorizing team member.

If a procedure within this FOM is frequently modified or violated, leadership should conduct an assessment that results in the modification or violation ceasing, or it may prompt the need for a revision to incorporate a change reflecting new realities, situations, or conditions. If this FOM is

consciously ignored, it will soon become a worthless document.

This FOM does not address every situation; however, it will attempt to address what positions within IL OSHA have the authority/discretion to address the situation.

1-8 CONFLICT WITH OTHER DOCUMENTS

If a part of this FOM appears to conflict with another document, enforcement team members shall contact their supervisor. Document examples may include but are not limited to: the IDOL Policy Manual, AFSCME Collective Bargaining Agreement and IDOL/IL OSHA Special Orders.

1-9 DISCLAIMER

This FOM is intended to provide instruction regarding some of the internal operations of the Illinois Department of Labor, Division of Occupational Safety and Health, IL OSHA and is solely for the benefit of the Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this FOM. The contents of this FOM are not enforceable by any person or entity against the Department of Labor or the State of Illinois.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 2: Program Planning
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

2-1 INTRODUCTION

IL OSHA's mission is to ensure safe and healthy working conditions by setting and enforcing standards and providing training, outreach, education, and assistance to state and local government employers and employees throughout Illinois.

All language in this chapter is considered a procedure unless noted otherwise.

2-2 ENFORCEMENT PROGRAM RESPONSIBILITIES OUTSIDE OF INSPECTIONS

A. **Support IL OSHA outreach program:** Enforcement team members will participate in IL OSHA outreach activities under the direction of the Division Chief.

B. **Respond to requests for assistance:** All reasonable requests from employers or employees for compliance information or assistance shall receive timely, accurate, and helpful responses. Requests will not trigger an inspection, nor will such employer inquiries protect the requesting employer against inspections conducted pursuant to existing policy. Complex and/or time intensive requests shall be referred to the Regional Enforcement Manager.

   NOTE: Reasonable requests from small employers must receive special consideration and priority since small employers may need special assistance in understanding and complying with regulations.

2-3 IL OSHA COOPERATIVE PROGRAMS OVERVIEW

A. **On-Site Consultation Program:** The Division's On-Site Consultation Program offers a variety of services at no cost to small employers. These services include assisting in the development and implementation of an effective safety and health management system and offering training and education to the employer and employees at the worksite. Smaller businesses in high hazard industries or those involved in hazardous operations receive priority. Consultation has limited availability for state and local government employer consultation visits.

B. **Safety and Health Achievement Recognition Program (SHARP):** The Safety and Health Achievement Recognition Program (SHARP) acknowledges small-and medium-sized businesses that have used the no-cost and confidential On-Site Consultation Program and operate exemplary workplace safety and health programs. Consultation has designated a limited portion of their SHARP program for state and local government employers. Active SHARP status exempts an employer (all establishments) from IL OSHA programmed inspections.

C. **Voluntary Protection Program (VPP):** *RESERVED*

D. **Strategic Partnerships:** *RESERVED*

E. **Alliance Program:** *RESERVED*

2-4 ENFORCEMENT INSPECTIONS

IL OSHA's system for conducting inspections is designed to allocate available resources as effectively as possible to ensure that maximum feasible protection is provided to state and local government employees. The Division Chief or designee will ensure that inspections are scheduled within the framework of this chapter, that they are consistent with the objectives of the Division, and that appropriate documentation of scheduling practices is maintained. If an inspection is of a complex nature, the Division Chief or designee may consider utilizing additional internal resources or requesting external resources.

A. **Inspection Priority**

1st Imminent Danger
2nd Reportable (fatality, inpatient hospitalization, amputation, loss of eye)
3rd Complaints/Referrals
4th Follow-up Inspections and Monitoring Inspections
5th Programmed Inspections

B. **Efficient Use of Resources:** Deviations from this priority list must be justifiable, promote efficient use of resources, and promote effective employee protection. Inspection scheduling deviations must be documented in the case file diary sheet.

C. **Effect of Contest:** If an employer has contested a citation from a previous inspection at a specific worksite, and the case is still pending, the following guidelines apply to additional inspections of the employer at that worksite:

If the employer has contested the penalty only, the inspection will be scheduled as if there were no contest.

If the employer has contested the citation itself, then programmed and unprogrammed inspections will be scheduled, but all items under contest will be excluded from the inspection unless a potential imminent danger is involved.

D. **Jurisdiction:** The following regulations address IL OSHA jurisdiction.

1. *(820 ILCS 219/15) Application of Act.*

   "This Act applies to every public employer in this State and its employees. Nothing in this Act, however, applies to working conditions of employees with respect to which federal agencies, and State agencies acting under Section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and

health. Any State regulations more strict than applicable federal standards shall, before being promulgated, be the subject of hearings as required by this Act."

2. *(820 ILCS 219/5) Definitions. In this Act:*

   "Employee" means a person in the service of any of the following entities, regardless of whether the service is by virtue of election, by appointment or contract, or by hire, and regardless of whether the relationship is express or implied or established orally or in writing:
   (1) The State. For purposes of this paragraph (1), the term includes a member of the General Assembly, a member of the Illinois Commerce Commission, a member of the Illinois Workers' Compensation Commission, and any person in the service of a public university or college in Illinois.
   (2) An Illinois county. For purposes of this paragraph (2), the term includes a deputy sheriff and an assistant State's Attorney.
   (3) An Illinois township.
   (4) An Illinois city, village, incorporated town, school district, or other municipal corporation or body politic.

   "Public employer" or "employer" means the State of Illinois or any political subdivision of the State.

E. **Home-Based Worksites:** IL OSHA will not perform inspections of employees' home offices. A home office is defined as office work activities in a home-based setting/worksite and may include the use of office equipment. IL OSHA will only conduct inspections of a home-based worksite when it receives a complaint or referral alleging that a violation of a safety or health standard exists that threatens physical harm, that an imminent danger is present, or that there was a work-related fatality.

F. **Inspection/Investigation Types:**

1. Unprogrammed: Inspections scheduled in response to alleged hazardous working conditions identified at a specific worksite are classified as unprogrammed and include imminent dangers, fatalities/catastrophes, complaints/referrals, follow-up, and monitoring inspections.

   NOTE: This category includes all employers/employees directly affected by the subject of the unprogrammed activity and is especially applicable to multi-employer worksites.

2. Unprogrammed Related: Inspections of employers at multi-employer worksites whose operations are not directly addressed by the subject of the conditions identified in a complaint, accident, or referral are designated as unprogrammed related.

   Example: A trenching inspection conducted at the unprogrammed worksite where the trenching hazard was not identified in the complaint, accident report, or referral.

3. Programmed: Worksite safety and health inspections that have been scheduled based upon objective or neutral selection criteria are programmed inspections. The worksites are selected according to national scheduling plans or under local, regional, and national special emphasis programs.

4. Program Related: Inspections of employers at multi-employer worksites whose activities were not included in the programmed assignment, such as a low injury rate employer at a worksite where programmed inspections are being conducted for all high-rate employers.

2-5 UNPROGRAMMED ACTIVITY – HAZARD EVALUATION AND INSPECTION SCHEDULING

Procedures relating to unprogrammed activity are in subject specific chapters of this manual.

2-6 PROGRAMMED INSPECTIONS

A. Programmed Planned Inspections (PPIs): Regional Enforcement Managers (REM) will provide each inspector with programmed planned inspection lists within their assigned territory. Selected establishments will be provided in accordance with the current strategic plan. REMs will attempt to provide the inspector with the exact establishments to inspect. In some cases, available information is not sufficient to determine exact establishment classification prior arriving at the inspection site. In this case, the inspector with approval from the REM will determine establishments as they are organized in the current Site-Specific Targeting (SST) plan and as defined in Part 350.250(c) of the Administrative Code.

B. Construction Inspections: *RESERVED*

C. Maritime Inspections: *RESERVED*

D. Special Emphasis, National Emphasis, Local Emphasis Programs: *RESERVED*

E. Site-Specific Targeting (SST):
The SST inspection program is IL OSHA's main site-specific program planned inspection initiative for state and local government employers. The SST uses data received from a high hazard inspection targeting system based on reportable incident data collected in the OSHA Information System (OIS) during a multi-year period.

F. Cooperative Program Participant Inspections:

1. On-Site Consultation Program: A consultation visit in progress takes priority over a PPI. A consultation visit will be considered "in progress" from the opening conference through the end of correction dates and extensions. A PPI may be deferred for 90 calendar days if an establishment has requested an initial full-service comprehensive consultation and that consultation has been scheduled. An establishment shall not be subject to concurrent consultation and enforcement visits. Enforcement and consultation management will confer on any special

circumstances using chapter 2 of the current federal OSHA FOM as guidance. A consultation visit will terminate in the event of the following inspections: imminent danger, fatality/catastrophe, complaint/referral.

2. Safety and Health Achievement Recognition Program (SHARP): Active SHARP status exempts an employer (all establishments) from IL OSHA programmed inspections. SHARP participants are not exempt from: imminent danger, fatality/catastrophe, complaint/referral.

3. Voluntary Protection Program (VPP): *RESERVED*

4. Strategic Partnerships: *RESERVED*

5. Alliance Program: *RESERVED*

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 3: Inspection Procedures
Effective Date: 1 December 2020
Revised: 1 October 2025 **Signed:**

3-1 INTRODUCTION

The conduct of effective inspections requires judgment in the identification, evaluation, and documentation of safety and health conditions and practices. Inspections may vary considerably in scope and detail depending on the circumstances of each case.

All language in this chapter is considered a procedure unless noted otherwise.

3-2 PRE-INSPECTION PLANNING AND PREPARATION

A. **Review of Inspection History:** Inspectors shall search the OSHA Information System (OIS) for information relevant to the employer and establishment scheduled for inspection. The search should use name variations and address-matching due to possible variations in names and status (i.e., City of Decatur – Street Department, Decatur Public Works). **History review results shall be noted in the case file diary sheet, even if there is no prior inspection history.** Inspection history can be used to document an employer's heightened awareness of a hazard and/or standard to support the development of a willful or repeat citation.
NOTE: The Regional Enforcement Manager (REM) will review programmed planned inspection (PPI) lists for accuracy and past inspection history in OIS prior to issuance to inspectors in accordance with 2-6 A. of the FOM. If the history search by the inspector reveals that an establishment has had a comprehensive inspection within the past four years, notify the REM for guidance. REMs will also ensure active SHARP establishments are not included on issued PPI lists.

B. **Review of Consultation Program Participation:** Inspectors will verify whether the employer is a current program participant during the opening conference. Inspectors will be mindful of whether they are preparing for a programmed or unprogrammed inspection, as this may affect whether the inspection should be conducted and/or its scope.

C. **Safety and Health Issues Relating to Inspectors:** Inspectors shall ensure that they have all issued personal protective equipment available and in proper order prior to conducting an inspection. Inspectors shall also contact their REM prior to an inspection if they have a concern for their personal safety. IL OSHA will provide annual training to field staff on safety in relation to workplace violence they may encounter while conducting inspections.

D. **Restricted Access Establishments:** Inspectors shall contact their REM prior to departing for an inspection if they expect to encounter access restrictions.

E. **Advance Notice:** Section 120 of the Illinois Occupational Safety and Health Act contains prohibitions against providing advance notice of inspections, except as authorized by the Director or the Director's designee. Advance notice generally does not include non-specific indications of potential future inspections. **Any inspections with employer advance notice shall be noted in the case file diary sheet.** Section 350.70 a) and b) of the Administrative Rules details advance notice exceptions:

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 in which the inspection can most effectively be conducted after regular business hours or when special preparations are necessary for an inspection;

3) When necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection and in other circumstances in which the Division Manager determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

b) In the situations described in subsection (a), advance notice of inspections may be given only if authorized by the Division Manager, except that, in cases of apparent imminent danger, advance notice may be given by the Enforcement Inspector/Officer without such authorization if the Division Manager 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. Upon the request of the employer, the Inspector will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Inspector with the identity of the representative and with other information as is necessary to enable him or her promptly to inform the representative of the inspection. An employer who fails to comply with his or her obligation under this subsection promptly to inform the authorized representative of employees of the inspection, or to furnish information necessary to enable the Inspector promptly to inform the representative of the inspection, may be subject to citation and penalty. Advance notice in any of the situations described in subsection (a) 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.

To facilitate effective and thorough inspections, the following procedures identify advance notice requirements.

1. Advance Notice Procedure For Volunteer Fire Departments/Fire Districts: The Division Chief has a standing advance notice authorization for volunteer fire departments/fire districts since volunteer staffed fire stations do not maintain regular business hours. In accordance with b) above, advance notice shall not be

given more than 24 hours notice before the inspection is scheduled to be conducted. This is the **maximum** notice allowed by the Administrative Rules.

2. Advance Notice for Very Small Employers: The Division Chief has a standing 24 hour maximum advance notice authorization for township and county highway departments, and municipalities with populations of less than 1,000 residents. Many very small units of government do not maintain regular business hours. Below is a link to a tool to identify municipalities of less than 1,000 residents.

   https://www.city-data.com/city/Illinois3.html

3. Advance Notice Procedure for Illinois Department of Transportation: The Division Chief has a standing advance notice authorization for IDOT yards since they may not be staffed during regular business hours. Inspectors are to call the IDOT Occupational Safety and Health Unit Manager or designee 45 minutes prior to arriving at the establishment.

4. Advance Notice Procedure For All Other Employers: All other advance notice must be approved on a case-by-case basis in accordance with Section 350.70 a) and b). An advance notice authorization by the Division Chief may be appropriate for inspections of establishments that are anticipated to have access control restrictions or photo/video prohibitions (see 3-7 G. for more on photo/video).

F. Delays: Any delays in the conduct of an inspection shall be kept to an absolute minimum. Lengthy or unreasonable delays shall be brought to the attention of the Regional Enforcement Manager. In unusual circumstances, the Division Chief or designee may decide that a delay is necessary. In those cases, the employer or the inspector shall notify affected employee representatives, if any, of the delay and shall keep them informed of the status of the inspection.

G. Expert Assistance: The Division Chief or designee shall arrange for a specialist, preferably within IDOL or federal OSHA, to assist in an inspection or investigation when the need for such expertise is identified. Inspectors shall always accompany any non-IL OSHA specialist(s). All specialists shall be briefed by the inspector on the purpose of the inspection as well as potential hazards and personal protective equipment required.

H. Advance Compulsory Process (Inspection Warrant): Section 350.10 b) of the Administrative Rules details the applicable circumstances and process to obtain an inspection warrant prior to an inspection:

b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Division Manager and Chief Legal Counsel, circumstances exist that make the pre-inspection 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 Director 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 the equipment or expert.

3-3 INSPECTION SCOPE

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

A. **Comprehensive:** A complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection can be deemed comprehensive even though, because of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected.

B. **Partial:** An inspection limited to certain potentially hazardous areas, operations, conditions, or practices at the establishment.

1. Generally, unprogrammed and follow-up inspections will be conducted as partial inspections. The scope of the partial inspection should be limited to the specific work areas, operations, conditions, or practices forming the basis of the unprogrammed inspection or the inspection prior to the follow-up inspection.

2. A partial inspection can be expanded based on information gathered by the inspector during the inspection process, including from injury and illness records found in both OSHA forms 300 and 301, employee interviews, and plain view observations. The inspector should not expand a partial inspection based on 300 data alone.

3-4 CONDUCT OF INSPECTION

A. Time of Inspection: Inspections shall be made during regular working hours of the

establishment except when special circumstances indicate otherwise.

B. Presenting Credentials: Inspectors shall present their credentials (not their state ID) upon first contact with any employees at the establishment under inspection.

C. Entry:

1. Section 350.80 a) of the Administrative Rules states: *"At the beginning of an inspection, Inspectors 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 they wish to review."* If the agent in charge or a management official is not present, the inspection shall not be unreasonably delayed beyond one hour.

2. Section 350.80 c) of the Administrative Rules states: *"Inspectors 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."*

3. Conditions of the worksite shall be documented, as well as any immediate changes that may occur because of inspector presence.

4. Inspectors shall not sign any form or release or agree to any waiver. Inspectors may obtain a pass or sign a visitor log for accountability purposes. A signature shall not constitute any form of a release or waiver of prosecution of liability under the Illinois Occupational Safety and Health Act.

5. If the establishment scheduled for inspection is found to have ceased business (or has been privatized) and there is no known successor, the inspector shall report this to their REM.

D. Refusal to Permit or Hinder Inspection:

1. Section 65(b)(2) of the Illinois Occupational Safety and Health Act states: *"If a public employer refuses entry to an inspector upon being presented with proper credentials or allows entry but then refuses to permit or hinders the inspection in any way, the inspector shall leave the premises and immediately report the refusal to authorized management within the Division. Authorized management shall notify the Director to initiate the compulsory legal process to obtain entry or obtain a warrant for entry, or both."*

2. If the employer:

    i. objects to inspection of certain portions of the workplace;

    ii. hinders any important aspect of the inspection;

    iii. interferes with participation by employee representatives;

iv. interferes with audio, video recording or photography;

the inspector shall use his/her discretion to determine if the inspection should continue or if it should be considered a refusal to permit inspection. The inspector should document the situation and the determination.

3. On multi-employer worksites, valid consent can be granted by the owner, or another employer with employees at the worksite, for site entry.

4. If an inspector is assaulted or threatened with assault while in the performance of official duties, they shall immediately leave the establishment, contact law enforcement, and contact their REM.

E. Employee Responsibilities: While Section 20(e) of the Illinois Occupational Health and Safety Act requires employees to comply with rules promulgated under the Act, the Act does not provide for the issuance of citations or penalties against employees. Employers are responsible for employee compliance. If an inspector encounters employees systematically refusing to comply with an applicable standard, the matter shall be referred to their REM. Concerted refusals to comply by employees will not bar the issuance of a citation if the employer has failed to exercise control to the maximum extent possible, including discipline and discharge.

F. Strike, Labor Dispute, and Labor-Management Issues: Establishments may be inspected regardless of the existence of labor disputes, such as work stoppages, strikes or picketing. If the inspector identifies an unanticipated labor dispute at a proposed inspection site, they shall contact their REM. Inspectors **shall not** become involved in disputes between labor and management or interpret collective bargaining agreements.

1. Programmed Inspections: Programmed inspections can 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: Unprogrammed inspections will be performed during strikes or labor disputes. The credibility and veracity of any complaint shall be thoroughly assessed by the REM prior to scheduling an inspection. If there is a picket line at the establishment, inspectors shall attempt to locate and inform the appropriate union official of the reason for the inspection prior to initiating the inspection. During the inspection, inspectors will make every effort to ensure that their actions are objective and neutral.

G. Variances: Section 40 of the Illinois Occupational Safety and Health Act allows the Director of Labor to grant a temporary or permanent variance from a standard. An employer will not be subject to citation if the observed condition complies with an active variance issued to that employer.

3-5 OPENING CONFERENCE

A. General: Inspectors shall attempt to inform all affected employers of the purpose and

scope of the inspection, provide a copy of the complaint (if applicable), and include any employee representatives. If there is an objection to a joint employer-employee opening conference, separate conferences will be held. The opening conference should be brief so the inspection can quickly proceed to the walkaround. Inspectors will inform both the employer and the employee representative(s) of their rights during the inspection, including the opportunity to participate in the physical inspection of the workplace. The inspector should also explain Section 110 of the Illinois Occupational Safety and Health Act (commonly known as whistleblower protection).

NOTE: Inspectors should use the appropriate opening conference checklist located in: N:\OIS Enforcement\17 - CSHO RESOURCES\4 - NARRATIVES- FIELD NOTES (BLANK)\ Opening and Closing Conference check lists

B. **Immediate Abatement:** Inspectors shall explain to employers the advantages of abatement within 24 hours of inspection identification, including that there are no certification requirements for violations "corrected during inspection."

C. **Recordkeeping Rule:** Section 350.420 a) of the Administrative Rules require employers to provide requested injury/illness records within four business hours. The inspector should request records during the opening conference and begin the inspection upon completion of the opening conference.

D. **Hazard Assessment:** Inspectors shall request a copy of and review the establishment hazard assessment in accordance with §1910.132(d). If a written hazard assessment is not available (the standard does not require a written PPE hazard assessment, but does require written certification that an assessment was performed), inspectors shall ask about any potential worksite exposures and select appropriate personal protective equipment. Inspectors shall make reasonable efforts to avoid hazards rather than relying on personal protective equipment. Inspectors shall not enter any area where special entrance restrictions apply without contacting their REM for guidance. Inspector respirator use is controlled by the IL OSHA respiratory protection plan.

E. **Employee Walk-around Representatives:** During the opening conference, the highest-ranking union official/representative on-site shall designate who will participate in the walk-around. The inspector has the authority to resolve all disputes regarding walk-around participants. An inspector can also grant a third party to accompany them during the inspection.
Where employees are not represented by an authorized representative, there is no established safety committee, or employees have not chosen or agreed to an employee representative for inspection purposes (regardless of the existence of a safety committee), inspectors shall determine if other employees would suitably represent the interests of employees on the walk-around. If selection of such an employee is impractical, inspectors shall conduct interviews with a reasonable number of employees during the walk-around.

F. **Abbreviated Opening Conference:** Inspectors may conduct an abbreviated opening conference when circumstances dictate an immediate walk-around. In such cases, the

opening conference shall be limited to presenting credentials, the purpose of the visit, a hazard assessment for inspector safety, an explanation of rights, and a request for employer and employee representatives to participate in the inspection. All other elements shall be fully addressed in the closing conference.

G. **Process Safety Management Coverage Assessment:** Inspectors shall assess the chemicals on-site and their respective maximum intended inventories to determine if there are highly hazardous chemicals listed in §1910.119, Appendix A or flammable liquids or gases at or above the specified threshold quantity. If an inspector believes that a process at an establishment requires process safety management, they shall gather information and discuss PSM applicability with their REM.

H. **Voluntary Compliance Program Assessment:** Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections as referenced in Chapter 2, 2-6, F. Inspectors shall determine whether the employer falls under such an exemption during the opening conference.

3-6 REVIEW OF RECORDS, PROGRAMS, PLANS

A. **Injury and Illness Records:** When produced, inspectors shall review the employer's injury and illness records (including the employer's OSHA 300 logs, 300A summaries, and 301 incident reports) for three prior calendar years and the current year to date. Inspectors shall note any high injury/illness rates for further investigation during the inspection. Inspectors should document any high rates in their narrative and consider a Hazard Alert Letter.

B. **Injury and Illness Recordkeeping Deficiencies:** Any recordkeeping deficiencies or unusual circumstances should be investigated by the Inspector.

C. **Electronic 300A Reporting:** The inspector shall determine if the establishment is required to electronically submit OSHA 300A data to the ITA portal. If so, the inspector shall verify if the employer submitted for the previous year.

D. **General Information Records:** The inspector shall request a roster of current employees, a list of each employee's job classification/description, work hours, and assigned work area(s).

E. **Medical Resources/Plans:** Inspectors shall check whether the establishment has on-site medical coverage, first aid stations, and response time of emergency medical services.

F. **Programs and Plans:** The inspector will determine required applicable written programs and plans to review for compliance.

G. **Production of Records/Programs/Plans Other Than Injury/Illness Records:** Other records/programs/plans requested by an inspector should be produced by the employer as soon as possible. If not available at the time of the opening conference the inspector should request that they be compiled and available by the closing conference. If still

unavailable, the inspector should provide a deadline for the employer to submit the records that is reasonable but not long enough for the employer to fabricate or falsify documents.

3-7 WALK-AROUND INSPECTION

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

A. **Walk-around 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 inspector throughout or during any phase of an inspection if the inspector determines that such additional representatives will aid, and not interfere with, the inspection. For additional regulations, reference section 350.90 of the Administrative Rules.

    a. Disruptive Conduct: Inspectors may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, the inspector shall contact their REM for guidance.

B. **Evaluation of Safety Policies or Program:** The inspector should review the employer's overall recognition of the importance of safety in the workplace. Many small government employers may lack a formal health and safety program, but inspectors may still observe employees engaging in safe work practices. **Good practices should be noted in the narrative.**

C. **Record All Facts Pertinent to a Violation:**

    1. Safety and health violations (actual or potential) shall be brought to the attention of the employer and employee representatives at the time they are documented.

    2. Inspectors shall record in the violation worksheet (OIS) with a supporting narrative (OIS), at a **minimum**, the identity of the exposed employee(s), the hazard to which the employee(s) was exposed, the employee's proximity to the hazard (if applicable), the employer's knowledge of the condition, and the manner important measurements were obtained (if applicable), and how long the condition has existed. If employee exposure to hazards is not observed, the inspector shall document facts on which the determination is made that an employee has been or could be exposed.

    3. Inspectors will document interviews in a thorough and accurate manner, including names, dates, times, locations, type of materials, positions of pertinent articles, witnesses, etc.

4. Inspectors may be required to testify in hearings on IDOL's behalf and shall be mindful of this fact when recording observations during inspections. The case file and OIS shall reflect conditions observed in the workplace as accurately and detailed as possible.

D. Trade Secrets: A trade secret includes information concerning or related to 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.

1. Policy: All information which might reveal a trade secret shall be kept confidential. For additional regulations, reference section 350.100 of the Administrative Rules.

2. Restriction and Controls: When the employer identifies an operation or condition as a trade secret, it shall be treated as such and be labeled:

   "ADMINISTRATIVELY CONTROLLED INFORMATION"
   "RESTRICTED TRADE INFORMATION"

E. Collecting Samples: Inspectors shall determine early in the inspection whether sampling such as, but not limited to, air sampling and surface sampling is required, by utilizing the information collected during the walk-around and from the pre-inspection review. Summaries of the results shall be provided on request to the appropriate employees, including those exposed or likely to be exposed to a hazard, employer representatives and employee representatives.

F. Photo/Video: Photographs and/or video recordings, shall be taken whenever inspectors determine there is a need. Photographs that support violations shall be noted on the specific citation in the violation worksheet (OIS). Inspectors shall ensure that any photographs relating to confidential trade secret information are identified as such and are kept separate from other evidence. All film and photographs or video recordings shall be retained in the case file.

1. Photo/Video in Access Controlled or Restricted Facilities: It is possible that an inspector may be assigned to perform an inspection at a facility that has prohibitions on photo/video due to state or federal regulations that govern security areas and/or critical infrastructure. If an inspector anticipates this prior to entry, they shall notify their REM. The REM should consider obtaining a maximum 24 hour advance notice authorization from the Division Chief so they can contact the establishment, request the legal justification prohibiting photo/video and obtain authorization for photo/video. If an establishment does not plan to allow any photo/video by an inspector, the REM can propose a photo/video agreement based on a policy between federal OSHA and the U.S. Navy.

   - IL OSHA Photo/Video Policy for Access Controlled or Restricted

Facilities: IL OSHA inspectors can request that photo/video of safety and health conditions be taken by authorized representatives of the access controlled/restricted facility. Any photographs taken shall not be delivered to IL OSHA until all photographs have been fully screened and censored, as appropriate, in the interest of security. This process will be completed within a period of 15 working days after the inspection closing conference.

2. Photo/Video of Minors: Some inspections may take place at establishments where minors under the age of 18 are present. Inspectors shall make every effort to avoid taking photo/video of minors unless the inspector can verify that the minors present have parental authorization for photo/video (most schools have a photo/video/social media parental authorization policy).

3. Photo/Video of Medical Patients: Some inspections may take place at healthcare establishments. Inspectors will avoid taking photo/video of patients.

4. Photo/Video of Protected Health Information: Inspectors should avoid taking photos/video of personal medical information. However, sometimes this is necessary. These files must be stored in accordance with our medical records policy in 5-12 Inspection Records.

G. **Violations of Other Laws:** If an inspector observes a violative condition of a law other than the Illinois Occupational Safety and Health Act, the inspector shall discuss the condition with their REM for potential referral.

H. **Interviews with Employees:** According to section 350.110 of the Administrative Rules, inspectors may consult with employees concerning matters of occupational safety and health. Section 350.40 of the Administrative Rules authorizes inspectors to question employees privately regardless of employer preference. If an employee refuses to be interviewed, the inspector shall use professional judgment, in consultation with their Regional Enforcement Manager, in determining the need for the employee's statement. Section 350.80 g) of the Administrative Rules provides a subpoena process.

1. Employee Right of Complaint: The inspector may consult with any employee who desires to discuss a potential violation. Upon receipt of such information, the inspector shall investigate the alleged hazard, where possible, and record the findings.

2. Time and Location of Interview: Inspectors are authorized to conduct interviews during regular working hours and at other reasonable times, and in a reasonable manner at the workplace. Interviews often occur during the walk-around but may be conducted at any time during an inspection. If necessary, interviews may be conducted at locations other than the workplace.

3. Conduct of Interview:

    - Produce credentials and provide business card
    - Explain mission of IL OSHA is to ensure workers finish their shift safe and finish their career healthy
    - Explain reason for interview is to obtain factual information
    - Explain purpose of inspection/investigation
    - Determine English proficiency and contact interpreter, if necessary
    - Ask for interviewee's name, address and phone number
    - Explain the right to interview in private
    - Explain whistleblower protection
    - Explain potential citations are issued to employer, IL OSHA cannot cite employees.
    - If requested, make a reasonable effort to honor requests for a union representative to be present
    - If requested, honor requests for a personal attorney to be present and consult with REM before continuing
    - Be empathetic

4. Interview Statements: Interview statements of employees or other persons shall be obtained whenever the inspector determines that such statements would be useful in documenting potential violations. Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date the statement.

    - Any changes or corrections to the statement shall be initialed by the individual. Statements shall not otherwise be changed or altered in any manner.

    - **Statements shall include the words, "I request that my statement be held confidential to the extent allowed by law" and end with the following; "I have read the above, and it is true to the best of my knowledge."**

    - If the person making the declaration refuses to sign, the inspector shall note the refusal on the statement. The statement shall, nevertheless, be read back to the person to obtain agreement and noted in the case file.

    - If a statement is recorded on an electronic device the inspector shall ensure that consent is given to record in accordance with 720 ILCS 5/14. The person providing the recorded statement shall verbalize, "I request that my statement be held confidential to the extent allowed by law" and end with; "My statement is true to the best of my knowledge."

    - Recorded statements shall be downloaded from the device and stored in

the inspection case file as an audio/video file. A transcription of any recorded statement shall be made when necessary to the case.

- If an employee requests a copy of his/her interview statement, one shall be given to them.

5. The Informant Privilege:

- The informant privilege allows the government to withhold the identity of individuals who provide information about the violation of laws, including IDOL rules and regulations. The inspector shall inform employees that their statements will remain confidential to the extent permitted by law. However, each employee giving a statement should be informed that disclosure of his or her identity may be necessary in connection with enforcement or court actions.

  NOTE: Whenever an inspector makes an assurance of confidentiality as part of an investigation (i.e. informs the person giving the statement that their identity will be protected), the pledge shall be reduced to writing and included in the case file.

- The privilege also protects the contents of statements to the extent that disclosure may reveal the witness's identity. Where the contents of a statement will not disclose the identity of the informant (i.e., does not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply. Interviewed employees shall be told that they are under no legal obligation to inform anyone, including employers, that they provided information to IDOL. Interviewed employees shall also be informed that if they voluntarily disclose such information to others, it may impair the agency's ability to invoke the privilege.

I. Multi-Employer Worksites: On multi-employer worksites (in all industry sectors), more than one employer can be cited for a hazardous condition that violates an IL OSHA standard. A two-step process must be followed to determine whether more than one employer is to be cited. See the current federal OSHA CPL on Multi-Employer Citation Policy for further guidance.

J. Administrative Subpoena: IDOL can issue an administrative subpoena under section 350.80 g) of the Administrative Rules if necessary, to obtain records, documents, testimony and/or other supporting evidence necessary for completing an inspection or investigation within the statutory authority of IDOL, IL OSHA. See 11-1 Administrative Subpoena for more information.

K. Employer Abatement Assistance: Inspectors shall offer appropriate abatement assistance during the inspection as to how workplace hazards might be eliminated. The

inspector shall not imply IDOL endorsement of any product through use of specific product names when recommending abatement measures. The employer shall be informed that they are not limited to abatement as suggested, suggestions are general and may not be effective in all cases. The employer is ultimately responsible for selecting and implementing an abatement method and maintaining documentation.

3-8 CLOSING CONFERENCE

At the conclusion of an inspection, the inspector shall conduct a closing conference with the employer and the employee representatives, jointly or separately, as circumstances dictate. The closing conference may be conducted on-site or virtually as the inspector deems appropriate. If the employer refuses to allow a closing conference, the circumstances of the refusal shall be documented in the case file narrative and the case shall be processed as if a closing conference had been held.

NOTE: Inspectors should use the appropriate closing conference checklist located in: N:\OIS Enforcement\17 - CSHO RESOURCES\4 - NARRATIVES- FIELD NOTES (BLANK)\ Opening and Closing Conference check lists

NOTE: When conducting separate closing conferences for employers and labor representatives (where the employer has declined to have a joint closing conference with employee representatives), the inspector shall normally hold the conference with employee representatives first, unless the employee representative requests otherwise. This procedure will ensure that worker input is received before employers are informed of violations and proposed citations.

A. Discussion Items:

1. The inspector shall discuss the apparent violations and other pertinent issues found during the inspection, including input for establishing correction dates.

2. The inspector shall briefly discuss the employer rights and responsibilities following an inspection and answer any questions. All matters discussed during the closing conference shall be documented, including a note describing any materials distributed.

3. Both the employer and employee representatives shall be advised of their rights to participate in any subsequent conferences, meeting or discussions, and their contest rights. Any unusual circumstances noted during the closing conference shall be documented.

4. Since the inspector may not have all pertinent information at the time of the first closing conference, a second closing conference may be held virtually or in person.

5. The inspector shall advise employee representatives that the employer should notify them if a notice of contest or a petition for modification of abatement date

is filed, they have whistleblower protections and they have a right to contest the abatement date in writing within 15 working days after the receipt of the citation.

6. Inspectors shall explain that most IL OSHA citations do not carry monetary penalties but also state that if there is a penalty, it must be paid within 15 working days after receipt of the citation unless the employer contests the citation/penalty.

7. Inspectors shall provide the employer representative with a blank Electronic service consent form for e-mail service. Save the completed form to case file folder 6-Letters. Employers do have the option to refuse electronic service.

B. **Informal Conference Option:** The inspector shall advise that a request for an informal conference with the Division Chief or their designee must be made within 15 working days after receipt of the citation. The informal conference must also be held within the 15 working day period. An informal conference provides an opportunity to:

- Resolve disputed citations and penalties without the need for litigation which can be time consuming and costly;
- Obtain a more complete understanding of the specific safety or health standards which apply;
- Discuss ways to correct the violations;
- Discuss issues concerning proposed penalties;
- Discuss proposed abatement dates; and
- Discuss issues regarding employee safety and health practices.

C. Hazard Control: The inspector should explain best practices in hazard control through the explanation of the hierarchy of hazard controls.

D. Abatement: The inspector should thoroughly explain the abatement process.

1. Abatement Certification. Abatement certification is required for each citation item(s) that the employer receives, except those identified as "Corrected During Inspection."

2. Corrected During Inspection (CDI). Violations abated within 24 hours of identification and will be identified as "Corrected During Inspection."

3. Abatement Documentation. Abatement documentation, the employer's physical proof of abatement, is required to be submitted for each violation. To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed.

4. Placement of Abatement Verification Tags. The required placement on movable equipment of either abatement verification tags or the citation must also be discussed at the closing conference, if applicable.

5. Requirements for Extended Abatement Periods. Where extended abatement periods are involved, the requirement for abatement plans and progress reports shall be discussed.

3-9 Special Inspection Procedures:

A. Follow-up, Previously Abated: A follow-up inspection is to determine if previously cited violations that have been abated have subsequently reoccurred. If so, a repeat citation may be appropriate. Issuance of willful, repeated, and high gravity serious violations; failure to abate notifications; and/or citations related to imminent danger situations are examples of candidates for follow-up inspections. The REM has the discretion to conduct a follow-up inspection based on a review of the circumstances. The scope of the follow-up inspection shall be partial and shall be limited to the circumstances of the previously cited violations. See section 3-3 for circumstances that allow for expansion of scope.

B. 1st Follow-up, Failure to Abate: A failure to abate inspection is conducted when a previously cited violation continues unabated, and the abatement date has passed or the employer has not complied with interim measures within the allotted time specified in a long-term abatement plan (over 90 days).

NOTE: Prior to conducting the 1st failure to abate inspection, the following process shall be performed.

- Prior to the abatement date, the inspector should make a reasonable effort to notify the employer that the abatement date is approaching, and abatement has not occurred. The inspector should assist the employer with completing a PMA if the inspector determines this is a reasonable approach.

- Starting the day after the abatement date, a 13 calendar day grace period is automatically extended to the employer. Together, the inspector and REM should contact the highest ranking elected or appointed official by telephone and e-mail the day after the abatement date to inform them of the situation, the ability to submit a late PMA for consideration if accompanied by an employer's statement of exceptional circumstances, and that if abatement is not completed within 13 calendar days they may be subject to a follow-up inspection to verify a failure to abate that could result citations that include monetary penalties.

- If abatement is not complete within 20 calendar days after the abatement date and no PMA was approved, the REM will assign the inspector to conduct a 1st follow-up, failure to abate inspection as soon as possible.

C. 2nd Follow-up, Failure to Abate: If a previously cited violation continues unabated after the abatement date listed in the 1st follow-up failure to abate inspection, repeat the above process but inform the employer that a PMA will not be considered. The Division Chief shall consult with the Legal Division after completion of the 2nd follow-up, failure to abate inspection.

D. **Monitoring:** A monitoring inspection is conducted during a lengthy abatement period. The REM has the discretion to assign a monitoring inspection based on a review of the circumstances.

E. **Construction:** The standards published as 29 CFR Part 1926 have been adopted as occupational safety and health standards in 350.700 b) 1) of the Illinois Administrative Rules. They apply to every employer and place of employment of every employee engaged in construction work, including non-contract construction.

The term "construction work" as defined by §1926.32(g)means work for construction, alteration, and/or repair, including painting and decorating. These terms are also discussed in §1926.13. The applicability of 1926 vs. 1910 should be based on the work or process observed, not the establishment or employer. If any question arises as to whether an activity is deemed to be construction for purposes of the Act(s), consult the REM.

1. Inspector safety: Construction worksites are often dynamic and hazardous. Inspectors shall ensure they observe all vehicle safety procedures for entering a worksite and ensure they have donned all appropriate personal protective equipment before entering the worksite.

2. Entry: The inspector shall ascertain whether there is a representative of a state contracting agency (i.e., Capital Development Board) at the worksite. If so, they shall contact the representative, advise him/her of the inspection and request that they attend the opening conference. If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished to the affected state and local government employers.

3. Closing conference: Upon completion of the inspection, the inspector shall confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed, or violations which the employer created or controlled. Employee representatives participating in the inspection shall also be afforded the right to participate in the closing conference(s).

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 4: Violations
Effective Date: 1 December 2020
Revised: 1 October 2025 **Signed:**

4-1 BASIS OF VIOLATIONS AND CITATION DEVELOPMENT

To establish a strong and defensible citation, an inspector must document more than just a violation of a safety or health standard. Inspectors shall ensure the following prior to recommending a citation with a serious violation:

- A standard applies (SA)
- A standard was violated (SV)
- An employee(s) was exposed (EE)
- The employer had knowledge of the hazardous condition (EK)
- SA-SV-EE-EK

This chapter will provide further detail on these elements, explain different types of violations, and cover other aspects of violations including use of the general duty clause in the Illinois OSH Act, 820 ILCS 219/20(a).

All language in this chapter is considered a procedure unless noted otherwise.

A. Standards and Regulations:

1. Section 20(b) of the Illinois OSH Act states that each employer has a responsibility to comply with occupational safety and health standards promulgated under the Act. Section 350.700 of the Administrative Rules incorporates the following federal occupational safety and health standards by reference: 29 CFR **1908, 1910, 1915 and 1926**. Consensus standards have also been incorporated by reference within these standards. 1910.6 explains that the mandatory provisions of consensus standards incorporated by reference into federal standards have the same force and effect as federal standards.
   Newly created/amended federal occupational safety and health standards within 29 CFR 1908, 1910, 1915 and 1926 shall become rules of the Department of Labor within six months of their federal promulgation date. There are a limited number of exceptions to this contained in 350.700. See 350.700 for more information including incorporation of interpretations of federal regulations.

2. The specific standards and regulations are found in 29 CFR 1900 series. Subparts A and B of 29 CFR 1910 specifically establish the source of all the standards, which serve as the basis for violations. Standards are subdivided as follows:

Subdivision Naming Convention	Example
Title	29
Part	1910
Section	305
Paragraph	(j)
Subparagraph	(6)
Item	(ii)
Subitem	(A)
Subitem 2	(*2*)

NOTE: The most specific provision of a standard shall be used for citing violations.

3. Vertical and Horizontal Standards: Vertical standards apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment, or installations. An example of a vertical standard is 1910.266 – Logging operations. Horizontal standards are more general and can apply to multiple industries. An example of a vertical standard is 1910.133 – Eye and face protection. The following guidelines shall be considered to determine whether to cite under a horizontal or a vertical standard.

   - When a hazard in a particular industry is covered by both a vertical (e.g., 29 CFR 1915) and a horizontal (e.g., 29 CFR 1910) standard, the vertical standard shall take precedence even if the horizontal standard is more stringent.

   - In situations covered by both a horizontal (general) and a vertical (specific) standard where the horizontal standard appears to offer greater protection, the horizontal (general) standard may be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical (specific) standard. To determine whether there is a conflict or inconsistency between the standards, an analysis of the intent of the two standards must be performed. For the horizontal standard to apply, the analysis must show that the vertical standard does not address the precise hazard involved, even though it may address related or similar hazards.

   - EXAMPLE 4-1: When employees are connecting structural steel, §1926.501(b)(15) may not be cited for fall hazards above 6 feet since that specific situation is covered by §1926.760(b)(1) for fall distances of more than 30 feet.

   - When determining whether a horizontal or a vertical standard is applicable to a work situation, the inspector shall focus attention on the **particular activity** an employer is engaged in rather than on the nature of the employer's general business.

4. 1910 General Industry vs. 1926 Construction: When determining whether a 1910 or a 1926 standard is applicable to a work situation, the inspector shall focus attention on the **particular activity** an employer is engaged in rather than on the nature of the employer's general business.

    - Hazards found in construction work that are not covered by a specific 29 CFR 1926 standard shall not normally be cited under 29 CFR 1910 unless that standard has been identified as being applicable to construction.

    - Construction vs. maintenance activities: 1910.12(b) defines "construction work" as "work for construction, alteration, and/or repair, including painting and decorating." These activities would generally fall under 1926. Federal OSHA letters of interpretation have defined maintenance activities as "keeping a structure, fixture, or foundation in proper condition in a routine, scheduled, or anticipated fashion" and "keeping equipment in its existing state, i.e., preventing its failure or decline." Please see this letter of interpretation for further examples of construction vs. maintenance activities:

      https://www.osha.gov/laws-regs/standardinterpretations/2003-11-18

5. Variance from standards: An employer's requirement to comply with a standard may be modified through granting of a variance. See Section 350.500 of the Administrative Rules for detailed information about variances.

6. Recordkeeping standards: Section 350.250 b) of the Administrative Rules requires all public employers to maintain records of work-related injuries and illnesses under Subpart B of Section 350. When a citation is recommended for a recordkeeping violation, inspectors shall cite from Section 350 of the Administrative Rules instead of federally adopted standards.

7. Electronic reporting standards: Some public employers in Illinois are required to electronically submit OSHA 300A summaries to the federal OSHA injury tracking application website. The IL OSHA guidance memo on electronic submission is located on the IL OSHA website. When a citation is recommended for an electronic reporting violation, inspectors shall cite from Section 350.375 of the Administrative Rules instead of federally adopted standards.

B. Employee Exposure: A hazardous condition that violates an applicable standard or the general duty clause shall be cited only when employee exposure can be documented. The exposure(s) **must have occurred within the six months immediately preceding the issuance of the citation** to serve as a basis for a violation, except where the employer has concealed the violative condition or misled IL OSHA, in which case the citation must be issued within six months from the date when IL OSHA learns, or should have known, of the condition.

1. Definition of Employee: Section 5 of the Illinois OSH Act defines an employee as:

   "Employee" means a person in the service of any of the following entities, regardless of whether the service is by virtue of election, by appointment or contract, or by hire, and regardless of whether the relationship is express or implied or established orally or in writing:

   (1) The State. For purposes of this paragraph (1), the term includes a member of the General Assembly, a member of the Illinois Commerce Commission, a member of the Illinois Workers' Compensation Commission, and any person in the service of a public university or college in Illinois.

   (2) An Illinois county. For purposes of this paragraph (2), the term includes a deputy sheriff and an assistant State's Attorney.

   (3) An Illinois township.

   (4) An Illinois city, village, incorporated town, school district, or other municipal corporation or body politic.

2. Employer/Employee Relationship: Whether exposed persons are employees of a particular employer depends on several factors, the most important of which is **who controls the manner in which employees perform their assigned work**. The question of who pays these employees may not be the key factor. It is also important to note that an employee is not required to be paid by an employer to be considered an employee. According to section 5 of the OSH Act, they only need to be "in the service of" an applicable entity.

3. Proximity to the Hazard: The actual and/or potential proximity of the employees to a hazard shall be thoroughly documented (i.e., photos, measurements, employee interviews).

4. Observed Exposure: Employee exposure is established if the inspector witnesses, observes, or monitors the proximity or access of an employee to the hazard or potentially hazardous condition. The use of personal protective equipment may not adequately prevent employee exposures to a hazardous condition. Additional hazard controls may be necessary to provide adequate protection.

5. Unobserved Exposure: Where employee exposure is not observed, witnessed, or monitored by an inspector, the employee exposure may be established through witness statements or other evidence that exposure to a hazardous condition has occurred or may continue to occur.

   - Past Exposure: In incident investigations, prior employee exposure(s) may be established, through written statements or other evidence, that exposure(s) to a hazardous condition occurred at the time of the incident. Additionally, prior exposures may serve as the basis for a violation when:

- The hazardous condition continues to exist; or

- It is reasonably predictable that the same or similar condition could recur. This is possible when an employee exposure has occurred in the previous six months, the hazardous condition is an integral part of the employer's normal operations, and the employer has not established a policy or program to ensure that the exposure to the hazardous condition will not recur.

- Potential Exposure: Although observed exposure is preferable, potential exposure to a hazardous condition **may** be established if there is evidence that employees have access to the hazard. If the inspection reveals an adequately communicated and effectively enforced safety policy/program that would prevent or minimize employee exposure, including accidental exposure to the hazardous condition, it would not be reasonably predictable that employee exposure could occur. No citation should be recommended in this instance.

  To recommend a citation based on potential exposure, an inspector must illustrate the potential hazard and show that the hazard would pose a clear danger to employees simply by their presence in an area or by use of unsafe equipment/machinery. An example could be an inspector observing frayed life safety rope on a fire engine. Even if a firefighter states they have not performed a rope rescue in two years, it is reasonably predictable that they could be called to perform a rope rescue at any time. Use of a frayed life safety rope could result in serious injury or death. This circumstance would justify a citation based on potential exposure.

6. Documenting Employee Exposure: The inspector **shall thoroughly document exposure**, both observed and unobserved, for each potential violation. This includes:

   - Statements by the exposed employees, the employer (particularly the immediate supervisor of the exposed employee), other witnesses (other employees who have observed exposure to the hazardous condition), union representatives, engineering personnel, management, or members of the exposed employee's family;

   - Recorded statements or signed written statements;

   - Photo/video, and/or measurements; and

   - All relevant documents (e.g., autopsy reports, police reports, job specifications, site plans, Injury/Illness logs, equipment manuals, employer work rules, employer sampling results, employer safety and health programs, and employer disciplinary policies, etc.).

C. Employer/Employee Responsibilities:

1. Employer Responsibilities: Section 20(a) of the Illinois OSH Act states: *"Every public employer must provide reasonable protection to the lives, health, and safety of its employees and must furnish to each of its employees employment and a workplace which are free from recognized hazards that cause or are likely to cause death or serious physical harm to its employees."* Section 20(b) and (c) also requires employers to comply with the Act and standards promulgated under the Act as well as keep employees informed of their protections and obligations under the Act.

2. Employee Responsibilities: Section 20(e) of the Illinois OSH Act states: *"Every employee must comply with the rules that are promulgated from time to time by the Director under this Act and that are applicable to the employee's actions and conduct."* The Act does not provide for the issuance of citations/penalties against employees (however, see number 3. below regarding false statements). Employers are responsible for employee compliance.

   In cases where the inspector determines that employees are systematically refusing to comply with a standard applicable to their own actions and conduct, the matter shall be referred to the regional enforcement manager. Concerted refusals by employees to comply will not ordinarily bar the issuance of a citation where the employer has failed to exercise its authority to adequately supervise employees, including taking appropriate disciplinary action.

3. False Statements: Section 120(c) of the Illinois OSH Act states: *"A person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document required under this Act, or any standard, rule, regulation, or order adopted or issued under this Act, commits a Class 4 felony."* This applies to all persons.

4. Affirmative Defenses: An affirmative defense is a claim which, if established by the employer, will excuse it from a violation which has otherwise been documented by the inspector. Although affirmative defenses must be proved by the employer at the time of an administrative hearing, the inspector should preliminarily gather evidence to rebut an employer's potential argument supporting any such defenses. See, Affirmative Defenses section in Chapter 5 for additional information.

5. Multi-Employer Worksite: On multi-employer worksites in all industry sectors, more than one employer may be cited for a hazardous condition that violates an applicable standard. For specific and detailed guidance, see the multi-employer policy contained in CPL 02-00-124, Multi-Employer Citation Policy, dated December 10, 1999.

4-2 VIOLATIONS

A. **Other Than Serious Violations:** This is the lowest classification of violation used by IL OSHA. Other than serious violations do not pose an immediate threat of death or serious physical harm to employees but do have a direct and immediate relationship to employee health and safety. An example of this would be a recordkeeping violation. Other than serious violations do not necessarily require employee exposure due to the nature of the standard violated.

B. **Serious Violations:** Section 85(d) of the IL OSH Act states that *" a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from (i) a condition which exists or (ii) one or more practices, means, methods, operations, or processes which have been adopted or are in use in the workplace, unless the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation."*

1. The classification of a violation need not be completed for each instance. It should be done once for each citation or, if violation items are grouped in a citation, once for the group.

2. If the citation consists of multiple instances or grouped violations, the overall classification shall normally be based on the most serious item.

3. The four-factor analysis outlined below shall be followed in making the determination whether a violation is serious. Potential violations of the general duty clause shall also be evaluated based on these steps to establish whether they may cause death or serious physical harm.

4. Four Steps to be Documented:

   - Type of Hazardous Exposure(s) and Violated Standard: Identify the employee exposure (within the past six months) to a hazard and the violated standard (or general duty clause) that was designed to prevent the employee exposure.

   - Severity of Injury or Illness: Identify the most severe injury/illness that could be reasonably expected to result from the employee exposure. Inspectors shall consider all factors that would affect the severity of the injury/illness. Inspectors shall **not** consider the probability that the injury/illness would occur. Probability is considered in penalty assessment, not by classification.

   - Potential for Death or Serious Physical Harm: Determine if the most severe injury/illness could result in death or serious physical harm. Serious physical harm is defined as impairment of the body when part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. Impairment may be permanent, temporary, chronic or acute.

Examples of severe injuries resulting in serious physical harm include but are not limited to: amputations, concussions, crushing, fractures, burns, lacerations/punctures involving significant bleeding, sprains/strains, and musculoskeletal disorders.

Examples of illnesses resulting in serious physical harm include but are not limited to: cancer, respiratory illness, hearing impairment, central nervous system impairment, visual impairment and poisoning.

- Knowledge of Hazardous Condition: Determine whether the employer knew, or with the exercise of reasonable diligence could have known of the presence of the violative condition. **Inspectors can develop the strongest employer knowledge condition by documenting an employer representative acknowledging the condition.** Other strong methods include an employee reporting the condition to the employer or an employee being injured by the condition and reporting the injury. Inspectors shall document/record all evidence establishing employer knowledge.

  If an inspector must establish employer knowledge using the reasonable diligence justification, the inspector shall document/record all evidence that the employer could have known of the violative condition. Evidence to support this can include but is not limited to: the violative condition was in plain sight, the violative condition was not brief, the employer failed to regularly inspect the workplace, the employer failed to train and supervise employees about the condition. Additionally, a supervisor that is aware of a violative condition can usually be connected to the employer to establish knowledge.

C. Willful Violations: Section 85(c)(2) of the IL OSH Act states that *"A public employer that intentionally violates the Act, the Safety Inspection and Education Act, or the Health and Safety Act, or any standard, rule, regulation, or order under any of those Acts, or who demonstrates plain indifference to any provision of any of those Acts or any such standard, rule, regulation, or order, may be assessed a civil penalty of not more than $10,000."* The Division Chief shall be consulted on, as early in the inspection process as possible, and shall approve all willful violations.

1. Intentionally Violates:

   - An employer was aware of the requirements of the Act or of an applicable standard or regulation and was also aware of a workplace condition or practice in violation of those requirements, but did not abate the hazard; or

   - An employer was not aware of the requirements of the Act or standards, but had knowledge of a comparable legal requirement (e.g., state or local law) and was also aware of a workplace condition or practice in violation of that requirement.

NOTE: Good faith efforts made by the employer to minimize or abate a hazard may sometimes preclude the issuance of a willful violation.

- A willful violation can also be issued where an employer knows that specific steps must be taken to address a hazard but substitutes his or her judgment for the requirements of the standard. Example: the employer was issued repeated citations addressing the same or similar conditions but did not take corrective action.

2. Plain Indifference:

    - Management officials were aware of an applicable standard to the employer's business but made little or no effort to communicate the requirement to lower-level supervisors and employees.

    - Management officials were aware of a plainly obvious hazardous condition but made little or no effort to prevent violations from occurring. Example: The employer is aware of the existence of unguarded power presses that have caused near misses, lacerations, and amputations in the past and has done nothing to abate the hazard.

    - An employer was not aware of any legal requirement but knows that a workplace condition or practice is a serious hazard to the safety or health of employees and makes little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, or complaints by employees or their representatives.

    - NOTE: Voluntary employer self-audits that assess workplace safety and health conditions and practices shall not normally be used as a basis of a willful violation. However, once an employer's self-audit identifies a hazardous workplace condition or practice, the employer must promptly take appropriate measures to correct a violative hazard and provide interim employee protection.

    - Willfulness can also be established despite lack of knowledge of a legal requirement if circumstances show that the employer would have placed no importance on such knowledge. Example: An employer sends employees into a deep unprotected excavation containing a hazardous atmosphere without ever inspecting for potential hazards.

3. Intent: It is not necessary that the violation be committed with bad purpose or malice to be willful. It is sufficient that the violation was deliberate, voluntary, or intentional as distinguished from inadvertent, accidental, or ordinarily negligent.

4. Documenting Evidence for Justification: Inspectors shall develop and record on the Violation Worksheet all evidence that indicates employer knowledge of the requirements of a standard, and any reasons for why it disregarded statutory or other legal obligations to protect employees against a hazardous condition. Willfulness can exist if an employer is informed by employees or employee representatives about an alleged hazardous workplace condition or practice and the employer does not make a reasonable effort to verify or correct the hazard.

   Also, include facts showing that even if the employer was not consciously violating the Act, it was aware that the violative condition or practice existed and made no reasonable effort to eliminate it.

5. Willful Violations Related to a Fatality: Where a willful violation is related to a fatality and a decision is made **not** to recommend a criminal referral, the Regional Enforcement Manager shall ensure that the case file contains documentation justifying that conclusion. The file documentation should indicate which elements of a potential criminal violation make the case unsuitable for referral.

6. Other Factors for Consideration:

   - The nature of the employer's business and the knowledge of safety and health matters that could reasonably be expected in the industry;

   - Any precautions taken by the employer to limit the hazardous workplace conditions or practices;

   - The employer's awareness of the Act and of the responsibility to provide safe and healthful workplace; and

   - Whether similar violations and/or hazardous workplace conditions and practices have been brought to the attention of the employer through prior citations, accidents, warnings from OSHA or officials from other government agencies or an employee safety committee regarding the requirements of a standard.

D. Criminal/Willful Violations: Section 120(a) of the IL OSH Act states *"A public employer that willfully violates any provision of this Act or any standard, rule, regulation, or order under this Act commits a Class 4 felony if that violation causes the death of any employee."* All potential criminal/willful violations shall be referred as early as possible to the Division Chief. The quality of evidence is paramount during an investigation/inspection involving a potential criminal violation of the Act. To establish a criminal/willful violation,

1. IL OSHA must prove that:

   - The employer violated an applicable standard. A criminal/willful violation cannot be based on the general duty clause.

- The violation must be willful in nature.

- The violation of the standard caused the death of an employee. There must be clear evidence that demonstrates the violation of the standard was the direct cause of, or a contributing factor to, an employee's death.

2. If asked during an investigation, inspectors should inform employers that any violation found to be willful that has caused or contributed to the death of an employee is evaluated for potential criminal referral to the Office of the Illinois Attorney General.

3. Following the investigation, if the Regional Enforcement Manager decides to recommend criminal prosecution, a memorandum shall be forwarded promptly to the Division Chief. It shall include an evaluation of the possible criminal charges, taking into consideration the burden of proof requiring that the Government's case be proven beyond a reasonable doubt. In addition, if correction of the hazardous condition is at issue, this shall be noted in the transmittal memorandum, because in most cases prosecution of a criminal/willful case stays the resolution of the civil case and its abatement requirements.

4. The Division Chief shall normally issue a civil citation in accordance with current procedures even if the citation involves charges under consideration for criminal prosecution. The Director shall be notified of such cases. In addition, the case shall be promptly forwarded to the Legal Division for possible referral to the Office of the Illinois Attorney General.

E. Repeat Violations: An employer (does not have to be the same establishment) can be cited for a repeated violation if that employer has been cited previously for the same or a substantially similar condition or hazard and the citation has become a final order. A citation can become a final order by operation of law when an employer does not contest the citation, or pursuant to court decision or settlement. The underlying citation which the repeated violation will be based on must have become a final order **before** the occurrence or observation of the second substantially similar violation.

1. Identical Standards: Repeat violations are often based on the violation of the identical standard originally violated; however, this is not always the case. For example: with an original 1910.132 citation for lack of safety-toe footwear and a subsequent violation of 1910.132 for lack of a hard hat would not result in a repeat citation since the hazardous conditions address by safety-toe footwear and hard hats are not substantially similar.

2. Different Standards: In some circumstances, similar conditions or hazards can be demonstrated even when different standards are violated.

3. Time Limitations: A citation shall be issued as repeated if issued within five years of the final order date, or final abatement date of the previous citation, whichever is later.

4. Alleged Violation Description Language: The repeat AVD shall include the following language: "The employer was previously cited for a violation of this occupational safety and health standard or its equivalent contained in IL OSHA inspection number_____, citation _____ and was affirmed as a final order on (date), with respect to a workplace/worksite located at_____."

5. Second repeat: Subject to the condition above, a violation for a previous repeat citation can be issued with a corresponding penalty.

6. Regional Enforcement Manager Responsibilities: The Regional Enforcement Manager shall verify that repeat violation recommended by an inspector meets the criteria as described in this section. The REM must also ensure the case file includes copies of documents from the original inspection that provides the basis for the repeat violation and shows the final order date.

F. Failure to Abate Violations: A failure to abate violation exists when a cited hazardous condition, practice, or non-complying equipment has not been brought into compliance (i.e., the violation is continuously present), the final abatement date has passed, and the non-compliance is confirmed by a follow-up inspection. See chapter 3 for more information.

G. Multiple Standards, Same Violative Condition: In rare cases, the same factual situation can present a possible violation of more than one standard. Only one penalty shall be proposed for the violative condition. An additional violation of another standard shall not be added if compliance with the original cited standard violation effectively eliminates the hazard.

H. Combining and Grouping Violations:

1. Combining: Separate violations of a single standard, for example §1910.212(a)(3)(ii), having the same classification found during the inspection of an establishment or worksite generally shall be combined into one alleged citation item. Different options presented in the SAVEs of the same standard shall normally also be combined. Each instance of the violation shall be separately set out within that item of the citation.

   NOTE: Except for standards which deal with multiple hazards (e.g., Tables Z 1, Z 2 and Z 3 cited under §1910.1000 (a), (b), or (c)), the same standard may not normally be cited more than once on a single citation. However, the same standard may be cited on different citations based on separate classifications and facts on the same inspection, or if the inspection meets criteria for instance-by-instance violations.

2. Grouping: When a source of an identified hazard involves interrelated violations of different standards, the violations can be grouped into a single violation. The following situations normally call for grouping violations:

- Grouping Related Violations. If violations classified either as serious or other-than-serious are so closely related that they may constitute a single hazardous workplace condition or practice, such violations shall be grouped, and the overall classification shall normally be based on the most serious item.

- Grouping Other-than-Serious Violations Where Grouping Results in a Serious Violation: When two or more violations are found which, if considered individually, represent other-than-serious violations but together create a substantial probability of death or serious physical harm, the violations shall be grouped as a serious violation.

- Where Grouping Results in a High-Gravity Other-than-Serious Violation: Where the inspector finds, during the inspection, that a number of other-than-serious violations are present, the violations shall be considered in relation to each other to determine the overall gravity of possible injury resulting from an accident or incident involving the hazardous condition.

- Penalties for Grouped Violations. If penalties are to be proposed for grouped violations, the penalty shall be written across from the first violation item appearing on the Citation and Notification of Penalty.

3. When Not to Group or Combine:

- Multiple Inspections: Violations discovered during multiple inspections of a single establishment or worksite may not be grouped. Where only one inspection report has been completed, an inspection at the same establishment or worksite shall be considered a single inspection even if it continues for a period of more than one day or is discontinued with the intention of later resuming it.

- Separate Establishments of the Same Employer: The employer shall be issued separate citations for each establishment or worksite where inspections are conducted, either simultaneously or at different times. If inspectors conduct inspections at two establishments belonging to the same employer and instances of the same violation are discovered during each inspection, the violations shall not be grouped.

- General Duty Clause: Because a General Duty Clause citation covers all aspects of a serious hazard where no standard exists, there shall be no grouping of separate violations. This policy, however, does not prohibit grouping a violation with a related violation of a specific standard.

- Egregious Violations: Violations, which are proposed as instance-by-instance citations, shall not normally be combined or grouped.

I. **Violations Regarding Health Standards:** federal OSHA current FOM, ch. 4.

J. **Violations Regarding Noise:** IL OSHA Directive

K. **Violations Regarding the Respiratory Protection Standard:** federal OSHA current FOM, ch. 4.

L. **Violations Regarding Air Contaminant Standards:** federal OSHA current FOM, ch. 4.

M. **Violations Regarding Personal Hygiene Practices:** federal OSHA current FOM, ch. 4.

N. **Biological Monitoring:** federal OSHA current FOM, ch. 4.

4-3 USE OF THE GENERAL DUTY CLAUSE

Section 20(a) of the IL OSH Act contains the general duty clause that may be used by IL OSHA where there is no standard that applies to the particular hazard and in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard.

(820 ILCS 219/20)

Sec. 20. Duties of employers and employees.

(a) Every public employer must provide reasonable protection to the lives, health, and safety of its employees and must furnish to each of its employees employment and a workplace which are free from recognized hazards that cause or are likely to cause death or serious physical harm to its employees.

The general duty clause can be particularly applicable to inherently dangerous activities such as fire fighting, law enforcement and other emergency operations. Employers involved in such activities must take the necessary steps to eliminate or minimize employee exposure to all recognized hazards that are likely to cause death or serious physical harm. These steps include an assessment of hazards that may be encountered, providing appropriate protective equipment, and conducting necessary training and instruction, for all employees. An employer, who has failed to take such steps and allows its employees to be exposed to a hazard can be cited under the general duty clause.

A. **Evaluation of General Duty Requirements:** In general, **all** the following elements are necessary to prove a violation of the general duty clause.

    1. The employer failed to keep the workplace free of a hazard (a workplace condition or practice) to which employees of that employer were exposed;

    2. The hazard was recognized;

    3. The hazard was causing or was likely to cause death or serious physical harm; and

    4. There was a feasible and useful method to correct the hazard.

NOTE: An inspector is to gather as many facts as possible to support a general duty clause violation.

B. **Hazard Clearly Stated:** The hazard (workplace condition or practice) must be clearly stated in a citation to apprise employers of their obligations and must be a hazard the employer can reasonably be expected to prevent/control. The hazard must therefore be defined in terms of the presence of hazardous conditions or practices that present a particular danger to employees.

C. **Cite for Failure to Prevent/Control a Hazard:** A general duty clause violation must address the failure to prevent/control a hazard. It cannot be used to cite a failure to implement certain precautions, corrective actions, or abatement methods. As with other violations, a citation using the general duty clause cannot mandate abatement measures.

D. **The Hazard is Not a Particular Accident/Incident:** The occurrence of an incident does not necessarily mean that the employer has violated the general duty clause, although the incident may be evidence of a hazard. In some cases, a violation may be unrelated to the cause of the accident/incident. Although incident facts may be relevant and shall be documented, the citation shall address the **hazard in the workplace that existed prior to the incident**, not the particular facts that led to the occurrence of the accident/incident.

E. **The Hazard Must be Reasonably Foreseeable:** The hazard for which a citation is issued must be reasonably foreseeable. All of the factors that could cause a hazard need not be present in the same place or at the same time in order to prove foreseeability of the hazard; e.g., an explosion need not be imminent. It is necessary to establish the reasonable foreseeability of the workplace hazard, rather than the particular circumstances that led to an accident/incident.

F. **The Hazard Must Affect the Cited Employer's Employees:** The employees exposed to the general duty clause hazard must be the employees of the cited employer. An employer who may have created, contributed to, and/or controlled the hazard normally shall not be cited for such a violation if his own employees are not exposed to the hazard.

   In complex situations, such as multi-employer worksites, where it may be difficult to identify the precise employment relationship between the employer to be cited and the exposed employees, the Regional Enforcement Manager shall use available resources to make a determination.

   Whether or not exposed persons are employees of an employer depends on several factors, the most important of which is who controls the way the employees perform their assigned work. The question of who pays employees in and of itself may not be the determining factor to establish a relationship.

G. **The Hazard Must be Recognized:** Recognition of a hazard can be established based on external code/regulation/employer/industry/"common sense" recognition. The use of common sense as the basis for establishing recognition shall be limited. Recognition of the hazard must be supported by evidence and adequate documentation in the file.

1. External codes or regulations covering hazards not addressed by IL OSHA standards: In these situations the Regional Enforcement Manager, shall determine the designated or probable enforcement agency for the code or regulation. The Regional Enforcement Manager will only refer a hazard when an agency has a means for enforcement. If no means are available, IL OSHA will retain enforcement, referencing the code or regulation and utilizing the general duty clause.

2. Employer Recognized Hazard:

    - A recognized hazard can be established by evidence of actual employer knowledge of a hazardous condition or practice. Evidence of employer recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before the inspection.

    - Employer awareness of a hazard may also be demonstrated by a review of company memorandums, safety work rules that specifically identify a hazard, operations manuals, standard operating procedures, and collective bargaining agreements. In addition, prior accidents/incidents, near misses known to the employer, injury and illness reports, or workers' compensation data, may also show employer knowledge of a hazard.

    - Employer awareness of a hazard may also be demonstrated by prior inspection history which involved the same hazard.

    - Employee complaints or grievances and safety committee reports to supervisory personnel may establish recognition of the hazard, but the evidence should show that the complaints were not merely infrequent, off-hand comments.

    - An employer’s own corrective actions may serve as the basis for establishing employer recognition of the hazard if the employer did not adequately continue or maintain the corrective action or if the corrective action did not afford effective protection to the employees.

3. Industry Recognized Hazard: A hazard is recognized if the employer's relevant industry is aware of its existence. Recognition by an industry other than the industry to which the employer belongs is generally insufficient to prove this element of a general duty clause violation. Although evidence of recognition by an employer's similar operations within an industry is preferred, evidence that the employer's overall industry recognizes the hazard may be sufficient. Industry recognition of a hazard can be established in several ways:

    - Statements by safety or health experts who are familiar with the relevant conditions in industry (regardless of whether they work in the industry);

- Evidence of implementation of abatement methods to deal with the particular hazard by other members of the industry;

- Manufacturers' warnings on equipment or in literature that are relevant to the hazard;

- Statistical or empirical studies conducted by the employer's industry that demonstrate awareness of the hazard. Evidence such as studies conducted by the employee representatives, the union or other employees must also be considered if the employer or the industry has been made aware of them;

- Government and insurance industry studies, if the employer or the employer's industry is familiar with the studies and recognizes their validity;

- State and local laws or regulations that apply in the jurisdiction where the violation is alleged to have occurred and which currently are enforced against the industry in question. In such cases, however, corroborating evidence of recognition is recommended; and/or

- If the relevant industry participated in the committees drafting national consensus standards such as the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations, this can constitute industry recognition. Otherwise, such private standards normally shall be used only as corroborating evidence of recognition. Preambles to these standards that discuss the hazards involved may show hazard recognition as much as, or more than, the actual standards. However, these private standards cannot be enforced as IL OSHA standards, but they may be used to provide evidence of industry recognition, seriousness of the hazard or feasibility of abatement methods.

- References that may be used to supplement other evidence to help demonstrate industry recognition include the following:

- NIOSH criteria documents.

- EPA publications.

- National Cancer Institute and other agency publications.

- OSHA Hazard Alerts.

- OSHA Technical Manual.

4. Common Sense Recognized Hazard: If industry or employer recognition of the hazard cannot be established, hazard recognition can still be established if a hazardous condition is so obvious that any reasonable person would have recognized it. This form of recognition should be used only in flagrant or obvious cases.

H. The Hazard Was Causing or Likely to Cause Death or Serious Physical Harm: This element is the same as what is required to establish a serious violation. Reference section 4-2, B, 4.

I. The Hazard May be Corrected by a Feasible and Useful Method: To establish a general duty violation, IL OSHA must also identify the existence of a measure(s) that is feasible, available, and likely to correct the hazard. Evidence of feasible abatement measures shall indicate that the recognized hazard, rather than a particular incident, is preventable.

1. Acceptable Abatement Method in Alleged Violation Description: The AVD shall include a feasible and useful abatement method. The language shall state "Among other methods, one feasible and acceptable means of abatement would be to _____."

2. Examples of feasible and acceptable means of abatement include, but are not limited to:

   - The employer's method that existed but was not implemented;
   - Implementation of feasible abatement measures by the employer after the incident or inspection;
   - Feasible and useful abatement methods by other employers;
   - Recommendations by manufacturers, trade journals, national consensus standards, and individual employer work rules. National consensus standards (NFPA, ANSI, etc.) shall not be solely relied on to mandate specific abatement methods.
   - Evidence provided by expert witnesses shall be used only where there is no standard that applies to the hazard and in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard.

J. Limitations of the General Duty Clause:

1. The General Duty Clause Shall Not be Used When a Standard Applies to a Hazard: As discussed above, the general duty clause may not be cited if an IL OSHA standard applies to the hazardous working condition.

2. The General Duty Clause Shall Normally Not be Used to Impose a Stricter

Requirement than that Required by the Standard: When an existing standard is not adequate to protect worker safety and health, a general duty clause violation can be considered. All previously covered elements must be present and there must be actual employer knowledge that the standard was inadequate to protect employees from death or serious physical harm. This situation is rare and warrants strong review and consideration.

3. The General Duty Clause Shall Normally Not be Used to Require Additional Abatement Methods Not Set Forth in an Existing Standard: If a toxic substance standard covers engineering control requirements but not requirements for medical surveillance, the general duty clause shall not be cited to additionally require medical surveillance.

4. Alternative Standards: There are several general standards that shall be considered rather than general duty clause in situations where the hazard is not covered by a particular standard.

    - 1910.132 for a hazard that can substantially be corrected using PPE.
    - 1910.1000 or 1926.55 or 1910.134 for air contaminants.
    - 1910.141 for consuming food or beverages in an area exposed to toxic material.

K. Classification of Violations Under the General Duty Clause: The general duty clause can only be used for serious, willful or repeat violations. It shall not be used for criminal willful or other than serious violations.

L. General Duty Clause Enforcement Specifics: To ensure that citations of the general duty clause are defensible, the following procedures shall be followed:

1. The evidence necessary to establish each element of a general duty clause violation shall be documented in the file. This includes all photographs, videotapes, sampling data, witness statements, and other documentary and physical evidence necessary to establish the violation. Additional documentation includes evidence of specific and/or general awareness of a hazard, why it was detectable and recognized, and any supporting statements or reference materials.

2. If copies of documents relied on to establish the various general duty clause elements cannot be obtained before issuing the citation, these documents shall be accurately cited and identified in the file so they can be obtained later if necessary.

3. If experts are necessary to establish any element(s) of a general duty clause violation, such experts shall be consulted prior to the citation being issued and their opinions noted in the file.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 5: Case File Preparation and Documentation
Effective Date: 1 December 2020
Revised: 1 October 2025 **Signed:**

5-1 INTRODUCTION

These instructions are provided to assist inspectors in determining the minimum level of written documentation necessary in preparation of an inspection case file. All necessary information relative to documentation of violations shall be obtained during the inspection, (including but not limited to notes, audio/video, photographs, employer and employee interviews and employer-maintained records). Inspectors shall develop detailed information for the case file to establish the specific elements of each violation.

Inspectors and Regional Enforcement Managers shall follow all procedures. This is critical when an inspection involves important or novel facts or presents potentially complex litigation issues. If legal consultation is necessary, it shall be conducted at the earliest possible stage of the inspection.

All language in this chapter is considered a procedure unless noted otherwise.

5-2 POST INSPECTION CASE FILE

A. **Inspection Report:** The inspector shall obtain the following information to populate the inspection report that is generated in OIS and saved in the case file.

    1. RID, CSHO ID, Supervisor ID, Inspection Number
    2. Establishment Name, Primary NAICS, Site Address, Mailing Address, Site Activity, NAICS Inspected, Days on Site, Temporary or Fixed Site.
    3. Date/Time for: Entry, Opening and Closing Conferences, Walkaround, Exit
    4. Inspection: Type, Category, Scope, Sampling, SVEP, Emphasis
    5. Employment: numbers, participation, union status, notice, follow-up
    6. Employer Representative Information
    7. Employee Information
    8. Other applicable information as necessary

B. **Inspection Narrative Report:** The OIS Narrative Report shall contain the following at minimum:

    1. Opening conference notes
    2. Evaluation of employer's safety and health system and applicable programs
    3. Documentation containing accurate and concise information about employer and worksite
    4. Health sampling strategy (if applicable)
    5. Any other relevant comments/information

6. Discussion clearly addressing all items on complaint/referral (if applicable)
7. Coverage information
8. In-compliance notes (if applicable)
9. If "no inspection"explain why no inspection was conducted (if applicable)
10. Denial of entry (if applicable)
11. Closing conference notes

Use the OIS narrative for inspection 1835782 as a template to capture all required elements.

NOTE: Employee interviews can be formal, private, and one on one, or they can be informal, during the employee walkaround. In both cases, inspectors shall document employee names as files in Appendix D. Do not put names of employees confidentially interviewed in the narrative. When possible, inspectors should interview at least one employee in a private, one on one setting. This allows the employee to speak freely about hazards or concerns. See section 5-7 for additional requirements on interview statements.

C. **Violation Worksheet:** An OSHA Information System (OIS) generated violation worksheet will contain all the appropriate information for each violation from the inspection. The OIS entries will describe the observed hazardous conditions or practices, including all relevant facts, and all information pertaining to how and/or why a standard is violated. Specifically identify the hazard to which employees have been or could be exposed. Describe the type of injury or illness 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 potentially exposed. If employee exposure was not actually observed during the inspection, state the facts on which the determination was made (i.e., tools left inside an unprotected trench) that an employee has been or could have been exposed to a safety or health hazard.

The OIS violation worksheet shall contain the following at a minimum:

1. Explanation of the hazard(s), hazardous condition(s)
2. Identification of the machinery or equipment (include make, model, serial number)
3. Specific location of the hazard and employee exposure
4. Injury or illness likely to result from the exposure to the hazard
5. Employee proximity to the hazard with specific measurements (explain how measurements were obtained)
6. For contaminants, physical agents, add additional facts to clarify nature of employee exposure. Safety data sheets should be collected if applicable.
7. Information of exposed employees
8. Approximate duration of time the hazard has existed and frequency of exposure.
9. Employer knowledge, direct knowledge is preferred
10. Facts to establish direct employer knowledge with preference for verbatim comments made by the employer or employee during the walkaround or closing conference to show employee exposure and/or employer knowledge.
11. Other applicable facts that provide strong justification for possible legal challenges.
12. Appropriate and consistent abatement dates that are customized for each violation. Items corrected during inspection shall be noted as such. The shortest practicable abatement date shall be used and will require the professional judgement of the inspector and regional enforcement manager. Abatements over 30 days require justification. Abatements over 90 days are subject to special conditions.
13. Mention of records obtained to support the violation.
14. For repeat violations, the worksheet shall reference the previous citation, inspection number and final order date of the original citation.

NOTE: For potential willful violations, facts shall be documented as detailed in Chapter 4. For example, document facts that the employer knew that the condition existed, and that the employer was required to take additional steps to abate the hazard. Such evidence could include prior IL OSHA citations, previous warnings by an inspector, insurance company, or city/state inspector regarding the requirements of

the standard(s), the employer's familiarity with the standard(s), contract specifications requiring compliance with applicable standards, or warnings by employees or employee safety representatives of the presence of a hazardous condition and what protections are required by IL OSHA standards.

Also include facts showing that even if the employer was not consciously or intentionally violating the Act(s), the employer acted with such plain indifference for employee safety that had the employer known of the standard, it probably would not have complied anyway. This type of evidence would include instances where an employer was aware of an employee exposure to an obviously hazardous condition(s) and made no reasonable effort to eliminate it.

5-3 POST INSPECTION CASE FILE (NO CITATIONS ISSUED

For inspections that do not result in citations being issued, a lesser amount of documentation may be included in the case file. At a minimum, the case file shall include the Inspection Report, the Inspection Narrative, and statement copy of a No Violation letter that at the time of the inspection no conditions were observed in violation of any standard that was sent to employer and appropriate parties. Inspections with Hazard Alert Letters shall have the HAL placed in the "letters" folder of the case file.

5-4 CASE FILE (NO INSPECTION

For "No Inspections," the inspector shall include in the case file an Inspection Report, which indicates the reason why no inspection was conducted. If there was a denial of entry, the information necessary to obtain a warrant or an explanation of why a warrant is not being sought shall be included. The case file shall also include a complaint/referral response letter, if appropriate, which explains why an inspection was not conducted.

5-5 HEALTH INSPECTIONS

A. **Document Potential Exposure:** In addition to the documentation indicated above, inspectors shall document all relevant information concerning potential exposure(s) to chemical substances or physical agents (including, as appropriate, collection and evaluation of applicable Safety Data Sheets), such as symptoms experienced by employees, duration and frequency of exposures to the hazard, employee interviews, sources of potential health hazards, types of engineering or administrative controls implemented by the employer, and personal protective equipment being provided by the employer and used by employees.

B. **Employer's Occupational Safety and Health System**: Inspectors shall request and evaluate information on the following aspects of the employer's occupational safety and health system as it relates to the scope of the inspection.

    1. Monitoring: The employer's system for monitoring safety and health hazards in the establishment should include a program for self-inspection. Inspectors shall

discuss the employer's maintenance schedules and inspection records. Additional information shall be obtained concerning activities such as sampling and calibration procedures, ventilation measurements, preventive maintenance procedures for engineering controls, and laboratory services. Compliance with the monitoring requirements of any applicable substance-specific health standards shall be determined.

2. Medical: Inspectors shall determine whether the employer provides the employees with pre-placement 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 substance-specific health standards.

3. Records Program: Inspectors shall determine the extent of the employer's records program, such as whether records pertaining to employee exposure and medical records are being maintained in accordance with 1910.1020.

4. Engineering Controls: Inspectors shall identify any engineering controls present, including substitution, isolation, general dilution and local exhaust ventilation, and equipment modification.

5. Work Practice and Administrative Controls: Inspectors shall identify any control techniques, including personal hygiene, housekeeping practices, employee job rotation, employee training and education. Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure. Employee rotation is not permitted as a control under some standards.

6. Personal Protective Equipment: An effective personal protective equipment program should exist at the workplace. A detailed evaluation of the program shall be documented to determine compliance with specific standards, such as, 1910.95, 1910.134, and 1910.132.

7. Regulated Areas: Inspectors shall investigate compliance with the requirements for regulated areas as specified by certain standards. Regulated areas must be clearly identified and known to all appropriate employees. The regulated area designation must be maintained according to the prescribed criteria of the applicable standard.

8. Emergency Action Plan: Inspectors shall evaluate the employer's emergency action plan when such a plan is required by a specific standard. When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, inspector's evaluation shall determine if: potential emergency conditions are included in the written plan, emergency conditions are explained to employees and there is a training program for the protection of affected employees, including use and maintenance of personal protective equipment.

5-6 AFFIRMATIVE DEFENSES

An affirmative defense is a claim which, if established by the employer and found to exist by the inspector, will excuse the employer from a citation that has otherwise been documented.

A. **Burden of Proof:** Although employers have the burden of proving any affirmative defenses at the time of a hearing, inspectors must anticipate when an employer is likely to raise an argument supporting such a defense. Inspectors shall keep in mind all potential affirmative defenses and attempt to gather contrary evidence, particularly when an employer makes an assertion that would indicate raising a defense/excuse against the violation(s). Inspectors shall bring all documentation of hazards and facts related to possible affirmative defenses to the attention of the Regional Enforcement Manager.

B. **Explanations:** To establish an affirmative defense of an unpreventable, isolated event or supervisory misconduct, employers must show ALL of the following elements:

- A work rule adequate to prevent the violation
- Effective communication (training) of the rule to employees
- Methods (supervision) for discovering violations of work rules
- Effective enforcement (discipline) of rules when violations are discovered

Inspectors shall document whether these elements are present, including if the work rule at issue tracks the requirements of the standard addressing the hazardous condition.

EXAMPLE 5-1: An unguarded table saw is observed. The saw, however, has a guard which is reattached while the inspector watches. Facts to be documented include:

- Who removed the guard and why?
- Did the employer know that the guard had been removed?
- How long or how often had the saw been used without the guard?
- Were there supervisors in the area while the saw was operated without a guard?
- Did the employer have a rule that the saw only be operated with the guard on?
- How was the work rule communicated to employees?
- Did the employer monitor compliance with the rule?
- How was the work rule enforced by the employer when it found noncompliance?

C. **Impossibility/Infeasibility of Compliance:** Compliance with the requirements of a standard is impossible or would prevent performance of required work and the employer took reasonable alternative steps to protect employees or there are no alternative means of employee protection available.

EXAMPLE 5-2: An unguarded table saw is observed. The employer states that a guard would interfere with the nature of the work. Facts to be documented include:

- Would a guard make performance of the work impossible or merely more difficult?
- Could a guard be used some of the time or for some of the operations?
- Has the employer attempted to use a guard?
- Has the employer considered any alternative means of avoiding or reducing the hazard?

D. Greater Hazard: Compliance with a standard would result in a greater hazard(s) to employees than would noncompliance and the employer took reasonable alternative protective measures, or there are no alternative means of employee protection. Additionally, an application for a variance would be inappropriate.

EXAMPLE 5-3: The employer indicates that a saw guard had been removed because it caused the operator to be struck in the face by particles thrown from the saw. Facts to be documented include:

- Was the guard initially properly installed and used?
- Would a different type of guard eliminate the problem?
- How often was the operator struck by particles and what kind of injuries resulted?
- Would personal protective equipment such as safety glasses or a face shield worn by the employee solve the problem?
- Was the operator's work practice causing the problem and did the employer attempt to correct the problem?
- Was a variance requested?

5-7 INTERVIEW STATEMENTS

Interview statements of employees or other individuals shall be obtained to adequately document a potential violation. Statements shall normally be in writing and the individual shall be encouraged to sign and date the statement. During management interviews, inspectors are encouraged to take verbatim, contemporaneous notes whenever possible as these tend to be more credible than later general recollections.

A. **Inspectors shall obtain written statements when:**

1. There is an actual or potential controversy as to any material facts concerning a violation;

2. A conflict or difference among employee statements as to the facts arises;

3. There is a potential willful or repeated violation; and

4. In incident investigations, when attempting to determine if potential violations existed at the time of the accident.

B. **Language and Wording of Statement**: Interview statements shall normally be written in the first person and in the language of the individual when feasible. (Statements taken in a language other than English shall be subsequently translated.) The wording of the statement shall be understandable to the individual and reflect only the information that has been brought out in the interview. The individual shall initial any changes or corrections to the statement; otherwise, the statement shall not be modified, added to or altered in any way. The statement shall end with the wording: **"I have read the above, or the statement has been read to me, and it is true to the best of my knowledge."** Where appropriate, the statement shall also include the following: "I request that my statement be held confidential to the extent allowed by law." The individual shall sign and date the interview statement and the inspector shall sign it as a witness.

C. **Refusal to Sign Statement:** If the individual refuses to sign the statement, the inspector shall note such refusal on the statement. Statements shall be read to the individual and an attempt made to obtain an agreement. A note to this effect shall be documented in the case file. Recorded statements shall be transcribed whenever possible.

D. **Video/Audio Statements:** Interview statements may be video or audio recorded, with the consent of the person being interviewed. The statement shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so that it may be signed. Inspectors are encouraged to produce the written statement for correction and signature as soon as possible and identify the transcribing method.

E. **Administrative Depositions:** When necessary to document or develop investigative facts, a management official or other individual may be administratively deposed.

5-8 PAPERWORK AND WRITTEN PROGRAM REQUIREMENTS

In certain cases, violations of standards requiring employers to have a written program to address a hazard or make a written certification (e. g., hazard communication, personal protective equipment, permit required confined spaces and others) are considered paperwork deficiencies. However, in some circumstances, violations of such standards may have an adverse impact on employee safety and health. See CPL 02-00-111, Citation Policy for Paperwork and Written Program Requirement Violations.

5-9 GUIDELINES FOR CASEFILE DOCUMENTATION WITH AUDIO/VIDEO

The use of video recording as a method of documenting violations and of gathering evidence for inspection case files is encouraged. Certain types of inspections, such as fatalities, imminent danger, and ergonomics should include video recording. Other methods of documentation, such as handwritten notes, audio recording, and photography, continue to be acceptable and are encouraged to be used whenever they add to the quality of the evidence and whenever video recording equipment is not available. See CPL 02-00-098, Guidelines for Case File Documentation for use with Videotapes and Audiotapes, October 12, 1993.

5-10 OIS DIARY SHEET

All inspections shall contain an OIS diary sheet, which is designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case, especially those not noted elsewhere in the case file. Diary entries should be clear, concise, and legible and should be dated in chronological order to reflect a timeline of the case development. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event.

5-11 CITATIONS

Section 80(a) of the Illinois OSH Act states, *"A citation shall: (i) be in writing, (ii) describe with particularity the nature of the violation and include a reference to the provision of the Act, standard, rule, or regulation alleged to have been violated, and (iii) fix a reasonable time for the abatement of the violation."*

A. **Statute of Limitations:** Section 80(d) of the Illinois OSH Act states, *"A citation may not be issued under this Section after the expiration of 6 months following the occurrence of any violation."* In the case of an incident, the six-month date runs from the incident date, not the opening conference. Where the actions or omissions of the employer concealed the existence of the violation, the six-month issuance limitation is tolled until such time

that IL OSHA learns or could have learned of the violation. Additionally, the statute of limitations also applies to recordkeeping and reporting. This is the result of a case (Volks Constructors v. US Secretary of Labor). For example, electronic reporting for certain employers is due by March 2nd annually. IL OSHA could only cite for not electronically reporting until six months after March 2nd. If the inspection took place in November, IL OSHA could not cite for electronic reporting due in March. A hazard alert letter could be issued.

B. Issuing Citations: Section 80(c) of the Illinois OSH Act states, *"A citation shall be served on the employer or the employer's agent by delivering a copy to the person upon whom the service is to be had, or by leaving a copy at his or her usual place of business or abode, or by sending a copy by certified mail to his or her place of business, or by sending a copy by email to an email address previously designated by the employer for purposes of receiving notice under this Act."*

Citations shall be mailed/e-mailed to employee representatives after the transmission of the citation via e-mail to the address previously designated by the employer for electronic service or the Certified Mail Receipt. Citations shall also be mailed/e-mailed to any employee upon request and without the need to make a written request under the Freedom of Information Act (FOIA).

In the case of a fatality, the family of the victim shall be provided with a copy of the citations without charge or the need to make a written request.

C. Amending/Withdrawing Citations and Notifications of Penalties: Amendments to, or withdrawal of, a citation shall be made when information is presented to the Division Chief or designee, which indicates a need for such action and may include administrative or technical errors such as:

- Citation of an incorrect standard;
- Incorrect or incomplete description of the alleged violation;
- Additional facts not available to the inspector at the time of the inspection establish a valid affirmative defense;
- Additional facts not available to the inspector at the time of the inspection establish that there was no employee exposure to the hazard; or
- Additional facts establish a need for modification of the abatement date or the penalty, or reclassification of citation items.

D. When Amendment is not Appropriate: Amendments to, or withdrawal of, a citation shall not be made by the Division Chief or designee for any of the following:

- Timely Notice of Contest received;
- The 15 working days for filing a Notice of Contest has expired and the citation has become a Final Order; or
- Employee representatives were not given the opportunity to present their views (unless the revision involves only an administrative or technical error).

E. **Procedures for Amending or Withdrawing Citations**: The following procedures apply whenever amending or withdrawing citations. This is also applicable to Failure to Abate Alleged Violations citation amendments.

NOTE: OIS will not allow re-generation of the original citation packet with amended citations. The Citation and Notification of Penalty is a legal document that cannot be modified. A new document (Informal or Formal Settlement Agreement) is necessary to reflect the amendments.

1. Withdrawal of, or modifications to, the Citation and Notification of Penalty, shall normally be accomplished by means of Informal or Formal Settlement Agreements.

2. When circumstances warrant, the Division Chief or designee may withdraw a Citation and Notification of Penalty in its entirety. Justification for the withdrawal must be noted in the case file. A letter withdrawing the Citation and Notification of Penalty shall be sent to the employer. The letter, signed by the Division Chief or designee, shall refer to the original Citation and Notification of Penalty, state that they are withdrawn and direct that the employer post the letter for three working days in the same location(s) where the original citation was posted. When applicable, a copy of the letter shall also be sent to the employee representative(s) and/or complainant.

5-12 INSPECTION RECORDS

Inspection records are any record made by an inspector that concern, relate to, or are part of, any inspection, or are a part of the performance of any official duty.

All official forms and notes constituting the basic documentation of a case must be part of the case file. All original field notes are part of the inspection record and shall be maintained in the file. Inspection records also include photographs, as well as video/audio files. Inspection records are the property of the State of Illinois and not the property of the inspector and are not to be retained or used for any private purpose.

A. **Release of Inspection Information:** The information obtained during inspections is confidential but may be disclosable or non-disclosable based on criteria established in the Freedom of Information Act. Requests for release of inspection information shall be directed to the IDOL FOIA officer (Copy Division Chief).

B. **Classified and Trade Secret Information:** Section 350.100 of the Administrative Rules states:

a) All information reported to or otherwise obtained by the Director of Labor or his or her representative in connection with any inspection or proceeding under this Act or any standard, rule, regulation, or order adopted or issued under this Act which contains or might reveal a trade secret shall be considered confidential, except that such information may be

disclosed confidentially to other officers or employees concerned with carrying out this Act or when relevant to any proceeding under this Act. In any such proceeding, the Director or the court shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets. [820 ILCS 219/125]

b) A person who discloses a trade secret in violation of this Section commits a Class B misdemeanor. [820 ILCS219/125]

c) At the commencement of an inspection, the employer may identify areas in the establishment that contain or might reveal a trade secret. If the Enforcement Inspector/Officer has no clear reason to question the identification, information obtained in those areas, including all negatives and prints of photographs and environmental samples, shall be labeled "Confidential− Trade Secret" and shall not be disclosed.

d) Upon the request of an employer, any authorized representative of employees in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. When there is no such representative or employee, the Inspector shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

NOTE: A trade secret, includes information concerning or related to 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. Trade secret materials shall not be labeled as “Top Secret,” “Secret,” or “Confidential,” nor shall these security classification designations be used in conjunction with other words, unless the trade secrets are also classified by an agency of the U. S. Government in the interest of national security.

C. Medical Records:

1. Forms: The “Authorization of release for medical information” form is required to support the process of requesting medical records needed for review in respect of a safety and health accident investigations. This form is located on the network drive in this location: N:\OIS Enforcement\17 - CSHO RESOURCES\13 - FORMS\Medical Records Request FORM

2. Storage of medical information: All electronic medical records shall be stored in the file on the network drive in this location: N:\OIS Enforcement\MEDICAL RECORDS-CONFIDENTIAL!

   1910.1020(c)(6)(i) "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician, including: Medical and employment questionnaires or histories (including job description and occupational exposures), The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X-ray examinations

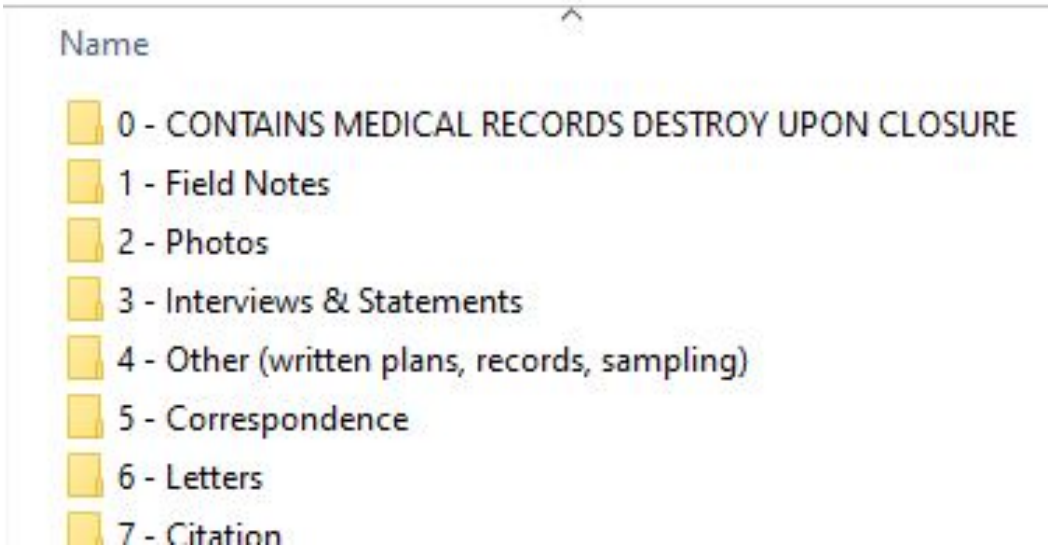
taken for the purpose of establishing a base-line or detecting occupational illnesses and all biological monitoring not defined as an "employee exposure record"), Medical opinions, diagnoses, progress notes, and recommendations, First aid records, Descriptions of treatments and prescriptions, and Employee medical complaints.

3. Responsibilities:

- The IL OSHA inspector is responsible to complete an authorization for release of medical information form limiting the scope of the request for medical information to minimum amount of information (request only the information needed to support the investigation).

- The IL OSHA inspector is responsible to ensure proper storage and to maintain the case file referring to the medical records storage location; the case file should not contain any copies of the medical records.

- The IL OSHA inspector shall make an folder in the case file noting medical records as exemplified below:



4. Elimination of medical records:

- All medical records shall be destroyed after case file is closed. The Regional Enforcement Manager is responsible to destroy the medical records upon closing the inspection.

- A notation will be made by the Regional Enforcement Manager in the case file diary when the records have been shredded and/or deleted from the designated folder on the N:\OIS Enforcement drive.

IDOL-Division of Occupational Safety and Health
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Chapter 6: Penalties and Debt Collection
Effective Date: 1 December 2021
Revised: 1 October 2023 **Signed:**

6-1 INTRODUCTION

Civil penalties and criminal penalties provided in the Illinois OSH Act are used on a limited basis. Penalties are not designed as punishment, but penalty amounts should be sufficient to serve as an effective deterrent for public sector employers.

All language in this chapter is considered a procedure unless noted otherwise.

6-2 CIVIL PENALTIES

A. **Statutory Authority for Civil Penalties:** Section 85 of the Illinois OSH Act provides the Director of IDOL with the statutory authority to propose civil penalties for violations of the Act. Proposed penalties are the penalty amount IL OSHA issues with the citation(s). Civil penalties authorized under Section 85 are as follows:

   1. Repeat violation (within five years of original violation), (c)(1) *A public employer that repeatedly violates this Act, the Safety Inspection and Education Act, or the Health and Safety Act, or any combination of those Acts, or any standard, rule, regulation, or order under any of those Acts, may be assessed a civil penalty of not more than $10,000 per violation.* Each repeat violation shall be evaluated as serious or other-than-serious, based on current workplace conditions, and not on hazards found in the prior case.

   2. Willful violation, (c)(2) *A public employer that intentionally violates this Act, the Safety Inspection and Education Act, or the Health and Safety Act, or any standard, rule, regulation, or order under any of those Acts, or who demonstrates plain indifference to any provision of any of those Acts or any such standard, rule, regulation, or order, may be assessed a civil penalty of not more than $10,000.* Each willful violation shall be classified as serious or other-than-serious. No willful violation, regardless or classification or reduction, shall be less than $1,000.

   3. Serious violations, (c)(3) *A public employer that has received a citation for a serious violation of this Act, the Safety Inspection and Education Act, or the Health and Safety Act, or any standard, rule, regulation, or order under any of those Acts, may be assessed a civil penalty up to $1,000 for each such violation.* A penalty for a serious violation may be assessed under direction of the Division Chief or in accordance with the IL OSHA SVEP Directive.

4. Other-than-serious violations, (c)(4) *A public employer that has received a citation for a violation of this Act, the Safety Inspection and Education Act, or the Health and Safety Act, or any standard, rule, regulation, or order under any of those Acts, which is not a serious violation, may be assessed a civil penalty of up to $1,000 for each such violation.* This includes a violation for an employer that fails to provide access to records as required under 1910.1020 for inspection and copying by any employee, former employee, or authorized representative of employees.

5. Posting requirement violation, (c)(5)(A) *Job Safety and Health Poster: an other than serious citation and a proposed penalty of $1,000.* A penalty is warranted if the employer demonstrates consistent disregard for the employer's responsibilities under the Illinois OSH Act and interviews show that employees are unaware of their rights under the Act, or IL OSHA has previously cited or advised the employer of the posting requirement. These violations shall be classified as other-than-serious.

6. Posting requirement violation, (c)(5)(B) *Annual Summary of Work-Related Injuries and Illnesses (OSHA Form 300A): an other than serious citation and a proposed penalty of $1,000, even if there are no recordable injuries or illnesses.*

7. Other posting requirement violations, (c)(5)(C) *Citation: an other than serious citation and a proposed penalty of $1,000.* This can be utilized if an employer fails to post a notice and/or citation.

8. Failure to abate violations, (c)(6) *A public employer that fails to correct a violation for which a citation has been issued within the period permitted may be assessed a civil penalty of up to $1,000 for each day the violation continues.* Failure to abate penalties shall be proposed when a previous issued citation has become a final order, the violative condition the employer was originally cited for has never been corrected and a re-inspection verifies this condition. The per calendar day penalty calculation shall start the day following the abatement date specified in the citation or final order and end on the day before the re-inspection. Minimum per day calculation is 20 days, maximum is 30 days.

9. Instance by instance violations: Penalties can be assessed for each violation issued instance-by-instance under direction of the Division Chief or in accordance with the IL OSHA SVEP.

10. SVEP: See IL OSHA SVEP for penalty information under that program.

6-3 GRAVITY OF VIOLATION

The gravity of the violation is used in determining penalty amounts through assessment:

A. **Severity Assessment:** The classification of an alleged violation as serious or other-than-

serious is based on the severity of the potential injury or illness. The following categories shall be considered in assessing the severity of potential injuries or illnesses:

1. Serious violations:
    - High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.

    - Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.

    - Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.

2. Other-Than-Serious violations:
    - Minimal Severity: Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the most serious injury or illness that could reasonably be expected to result from an employee's exposure would not be low, medium, or high severity and would not cause death or serious physical harm.

B. Probability Assessment: The probability that an injury or illness will result from a hazard has no role in determining the classification (serious or other-than-serious) of a violation but does affect the amount of the proposed penalty.

1. Probability will be greater or lesser.
    - Greater Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively high.

    - Lesser Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively low.

2. Factors to consider when determining probability:
    - Number of employees exposed;
    - Frequency of exposure or duration of employee overexposure to contaminants;
    - Employee proximity to the hazardous conditions;
    - Use of appropriate personal protective equipment;
    - Medical surveillance program;
    - Youth and inexperience of employees, especially those under 18 years old;
    - Training on the recognition and avoidance of the hazardous condition;
    - Other pertinent working conditions.

3. Final probability assessment: All factors outlined above shall be considered in determining a final probability assessment. When adherence to the probability assessment would result in an unreasonably high/low gravity, the assessment may be adjusted at the discretion of the REM and noted in the case file.

Penalty calculation table:

Repeat or Willful, Serious, Maximum $10,000

Severity	Probability	Gravity Based Penalty	Gravity
High	Greater	$10,000	High
Medium	Greater	$8,500	Moderate
Low	Greater	$6,600	Moderate
High	Lesser	$6,600	Moderate
Medium	Lesser	$4,600	Moderate
Low	Lesser	$2,000	Moderate

Repeat, Other-Than-Serious, Maximum $1,000

Severity	Probability	Gravity Based Penalty
Minimal	Greater	$1,000
Minimal	Lesser	$500

Willful, Other-Than-Serious, Maximum $1,000

$1,000 with no penalty reductions allowed.

Failure to Abate, Serious, Maximum $1,000 per day

Severity	Probability	Gravity Based Penalty	Gravity
High	Greater	$1,000	High
Medium	Greater	$850	Moderate
Low	Greater	$660	Moderate
High	Lesser	$660	Moderate
Medium	Lesser	$460	Moderate
Low	Lesser	$200	Moderate

Failure to Abate, Other-Than-Serious, Maximum $100 per day

Severity	Probability	Gravity Based Penalty
Minimal	Greater	$100
Minimal	Lesser	$50

Posting and other misc. violations, Other-Than-Serious, Maximum $1,000

$0-$1,000 based on circumstances (reference this chapter)

Serious per 6-2 A.3. Maximum $1,000

Severity	Probability	Gravity Based Penalty
Minimal	Greater	$1,000
Minimal	Lesser	$500

C. Penalty Reduction Factors

1. Size Reduction: This shall be calculated based on maximum number of employees of an employer statewide (all establishments and worksites) at any one time during the previous 12 months.
    - 1-25 employees = 60% reduction
    - 26-100 employees = 40% reduction
    - 101-250 employees = 20% reduction
    - 251 or more = 0% reduction

2. Good Faith Reduction:
    - 15%-25% reduction: A combination of the following situations can warrant a 15%-25% reduction: display of management commitment and employee involvement, effective initial and period safety training program, implementation of safety and health program best practices, rapid abatement exceeding requirements, written and detailed corrective action plan.
    - No reduction permitted: Willful violations, repeat violations, failure to abate violations nor any other violations from an inspection with these violations.

3. History Reduction:
    - 10% reduction will be given to employers with no serious, willful or repeat citations in final order status within the past three years from the opening conference of the current inspection.
    - No reduction will be given for a repeat violation.

4. Waiving or significant reduction of civil penalties for violations corrected during inspection: Regardless of the type or classification of violation, the Division Chief, on a case-by-case basis, has the discretion to waive or significantly reduce civil penalties for violative conditions that are corrected during inspection.

6-4 CRIMINAL PENALTIES

Section 120 of the Illinois OSH Act provides for criminal penalties. Criminal penalties are imposed by the courts and not IDOL. Criminal penalties authorized under Section 120 are as follows:

> *(a) Willful violation. A public employer that willfully violates any provision of this Act or any standard, rule, regulation, or order under this Act commits a Class 4 felony if that violation causes the death of any employee.*
>
> *(b) Advance notice of inspection. A person who gives advance notice to a public employer of any inspection to be conducted under this Act, without authority from the Director or the Director's authorized representative, commits a Class B misdemeanor.*

(c) False statement. A person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document required under this Act, or any standard, rule, regulation, or order adopted or issued under this Act, commits a Class 4 felony.

6-5 HANDLING MONIES RECEIVED FROM EMPLOYERS

It is IDOL policy to collect all penalties owed to the government. The Division Chief or designee is responsible for:

- Informing employers of debt collection procedures;
- Collecting assessed penalties from employers;
- Reporting penalty amounts collected and those due;
- Transferring selected cases to the Illinois Department of Labor Legal Division for legal action and subsequently tracking such cases;
- Mailing collected monies in accordance with the procedures set forth in this chapter and in other IDOL instructions.

A. Receiving Payments: The Division Chief or designee shall be guided by the following regarding penalty payments:

1. Methods of Payment: Employers assessed penalties shall remit the total payment by certified check, personal check, company check, postal money order, bank draft, bank money order, or E-Pay payable to the **Illinois Department of Labor**. Payment in cash shall not be accepted. Upon request of the employer and for good cause, alternate methods of payment are permissible, such as payments in installments.

2. Identifying Payment: The Inspection Number(s), **MUST BE PLACED** in the upper left or lower left-hand corner of the face of the payment instrument. The date of receipt **MUST BE STAMPED** on the face of the check and in the upper right corner if possible.

3. Records: A copy of the penalty payment instrument shall be included in the case file. Additional accounting records shall also be included in the case file in accordance with current procedures.

B. Time Allowed for Payment of Penalties: The date when penalties become due and payable depends on whether the employer contests.

1. Uncontested Penalties: When citations and/or proposed penalties are uncontested, the penalties are due and payable 15 working days following the employer's receipt of the Citation and Notification of Penalty or, in the case of Informal Settlement Agreements, 15 working days after the date of the last signature unless a later due date for payment of penalties is agreed upon in the settlement.

2. Contested Penalties: When citations and/or proposed penalties are contested, the date penalties are due and payable will depend upon whether the case is resolved by a settlement agreement, an administrative law judge decision, or a court judgment.

3. Partially Contested Penalties: When only part of a citation and/or a proposed penalty is contested, the due date for payment as stated in the paragraph Uncontested Penalties, shall be used for the uncontested items and the due date stated in the Contested Penalties section, for the con-tested items.

   NOTE: This provision notwithstanding, formal debt collection procedures will not be initiated in partially contested cases until a final order for the outstanding citation items has been issued.

   NOTE: The Attorney General may bring an action in the circuit court to enforce the collection of any civil penalty assessed under the Act.

C. Notification Procedures: It is IDOL policy to notify employers (the "Notice") that debts are payable and due, and to inform them of IDOL's penalty payment policy. A copy of the "Notice" stating IDOL's penalty payment policy shall be included with each Citation and Notification of Proposed Penalty sent to employers. A copy of the "Notice" shall be retained in the case file.

D. Notification of Overdue Debt: The Division Chief or designee shall send a demand letter to the employer when the debt has become delinquent and shall retain a copy of the demand letter in the case file. A debt becomes delinquent **30 calendar days after the due date**, which is the same as the **final order date**.

1. Uncontested Case with Penalties: If payment of any applicable penalty is not received within 30 calendar days after the date of the expiration of the 15 working day contest period, or 15 working days after the date of the last signature (unless a later due date for payment of penalties is agreed upon in the settlement) if an Informal Settlement Agreement has been signed, a demand letter shall be mailed.

2. Contested Case with Penalties: If payment of any applicable penalty is not received within 30 calendar days after the Administrative Law Judge's Final Order approving a Formal Settlement Agreement and no appeal of the case has been filed by either IDOL or the employer, the Division Chief shall either send a demand letter or a letter notifying the employer that the IDOL fine is past due.

3. Exceptions to Sending the Demand Letter:

   - The employer is currently making payments under an approved installment plan or other satisfactory payment arrangement. Such plan or arrangement shall be set forth in writing and signed by the employer and the Division Chief.

- NOTE: If the employer enters into a written plan establishing a set payment schedule within one calendar month of the due date, but subsequently fails to make a payment within one calendar month of its scheduled due date, a payment default letter shall be sent to the employer. If the employer fails to respond satisfactorily to that letter within one month, the unpaid portion of the debt shall be handled in accordance with the Assessment Procedures.

- The employer has partially contested the case (even if the penalty has not been contested). In such circumstances a demand letter shall not be sent until a final order has been issued.

E. Assessment of Additional Charges: Additional charges shall be assessed in accordance with Illinois Department of Labor Regulations.

1. Interest: RESERVED

2. Delinquent Charges: RESERVED

3. Administrative Costs: RESERVED

F. Assessment Procedures: If the penalty has not been paid by the delinquent date (i.e., within one calendar month of the due date), the Division Chief or designee shall implement the following procedures:

1. The demand letter shall be sent to the employer requesting immediate payment of the debt. The demand letter shall show the total amount of the debt.

2. Employers may respond to the demand letter in several ways:
   - The entire debt may be paid. In such cases no further collection action is necessary.
   - A repayment plan may be submitted or offered; after a set payment schedule has been approved by the Division Chief, no additional charges shall be levied against the debt as long as payments are timely made in accordance with the approved schedule.

3. If any portion of the debt remains unpaid after one calendar month from the time the demand letter was sent to the employer, the Division Chief shall institute one of the following:

   - Outstanding debts less than $100 may be written off.

   - If the employer made a payment after receiving the demand letter, the Division may send a receipt letter or contact the employer to request the balance due on the debt or refer the case to the Legal Division.

- Outstanding debts with a current debt of $100 or more shall be referred to the Legal Division.

4. After a case has been referred to the Legal Division for collection, the Division Chief has no further responsibilities regarding penalty collection related to that case.

5. If, after a case has been referred to the Legal Division, the employer mistakenly sends a payment to the wrong IDOL office, the case is subsequently contested, or new information regarding the debt or employer is obtained, the Division Chief shall contact the Legal Division immediately.

6. The responsibility for closing the case remains with the Division Chief. Once final collection action has been completed, the case may be closed whenever appropriate.

G. Application of Payments: Payments that are for less than the full amount of the debt shall be applied to satisfy the following categories in order of priority:

1. RESERVED

H. Uncollectible Penalties: There may be cases where a penalty cannot be collected, regardless of any action that has been or may be undertaken. In such cases, the Division Chief shall notify the Legal Division by phone or email prior to referring the case to the Office of the Director. The Legal Division will then advise what further collection action is appropriate. The database shall be updated to reflect the most recent action.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 7: Post-Citation Procedures and Abatement Verification
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

7-1 INTRODUCTION

All language in this chapter is considered a procedure unless noted otherwise.

A. Notice of Contest: When issuing citations to employers, IL OSHA documentation to employers shall provide notice that if the employer intends to contest, the employer must notify the Division Chief in writing. That notification to the Division Chief must be postmarked no later than the 15th working day after receipt of the citation and notification of penalty (working days are Monday through Friday, excluding State holidays), otherwise the citation becomes a final order. The agency has no authority to modify the contest period. Employers may also be apprised that their notice of contest can be sent electronically via email to the Division Chief within the 15 working day period and provide employers the email address(es). It shall be emphasized that oral notices of contest do not satisfy the requirement to give written notification. Reference: Part 350.190 of the Administrative Rules.

NOTE: Upon receipt of all electronic notices of contest, the Division Chief shall save the documents to the case file. The electronic notices and all attachments shall be included with evidence to be transmitted electronically to the Chief Administrative Law Judge and the Legal Division. Offices are encouraged to establish procedures to ensure ready access to email accounts designated to receive notices of contest to ensure the timely transmission of copies to the Chief ALJ and Legal Division. IDOL's acceptance of notices of contest via email shall not be interpreted to mean that the agency has consented to, or accepted, the electronic service of documents in litigation.

1. An employer's Notice of Intent to Contest must clearly state what is specifically being contested. It must identify which item(s) of the citation, penalty, the abatement date, or any combination of these is being objected to.
    - If the employer only requests a later abatement date and there are valid grounds to consider the request, the Division Chief should be contacted. The Division Chief may issue an amended citation changing an abatement date prior to the expiration of the 15 working day period.

    - If the employer contests only the penalty or 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. 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. Reference: Part 350.190 of the Administrative Rules.

B. Contest Process: When a Notice of Intent to Contest is properly filed (i.e., received and postmarked as described in this chapter), the Division Chief is required to forward the case to the Chief ALJ at which time the case is in litigation at the Hearings Division.

1. IL OSHA will normally cease all investigatory activities once an employer has filed a notice of contest. Any action relating to a contested case must first have the concurrence of the Legal Division, through notification of the Chief Legal Counsel.
2. Upon receipt of the Notice of Intent to Contest, the Chief Administrative Law Judge will schedule a hearing in either the Chicago or Springfield IDOL office, closest to the workplace, or the convenience of the parties.

7-2 INFORMAL CONFERENCES

A. General: An Informal Conference can be requested prior to initiating a formal contest as provided in the previous section. Reference: Part 350.220 of the Administrative Rules.

1. The employer, any affected employee, or the employee representative may request an Informal Conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.

2. The Informal Conference must be conducted within the 15 working day contest period. The conference or any request for such a conference shall not operate as a stay of the 15 working day contest period.

3. If the employer's intent to contest is not clear, the Division Chief or designated representative will try to contact the employer for clarification.

4. Informal Conferences may be held by any means practical, but meeting in person is preferred.

B. Assistance of Counsel: In the event that an employer is bringing its attorney to an informal conference, the Division Chief or his or her designee may contact the Legal Division and ask for the assistance of counsel.

C. Opportunity to Participate:

1. If an informal conference is requested by the employer, an affected employee or his representative shall be afforded the opportunity to participate, at the discretion of the Division Chief or designee. If the conference is requested by an employee or an employee representative, the employer shall be afforded an opportunity to participate.

2. If the affected employee or employee representative chooses not to participate in the informal conference, an attempt will be made to contact that party and to solicit their input prior to the informal conference. Attempts to contact the party should be noted in the case file.

   NOTE: In the event of a settlement, it is not necessary to have the employee representative sign the informal settlement agreement.

3. If any party objects to the attendance of another party or the Division Chief believes that a joint informal conference would not be productive, separate informal conferences may be held.

4. During the conduct of a joint informal conference, separate or private discussions will be permitted if either party so requests.

5. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest as prescribed in Section 350.190.

D. Notice of Informal Conferences: The Division Chief shall document in the case file notification to the parties of the date, time, and location of the informal conference. In addition, the case file diary sheet shall indicate the date of the informal conference.

E. Posting Requirement:

1. The Division Chief will ask the employer at the beginning of the informal conference whether the form in the citation package indicating the date, time, and location of the conference has been posted as required.

2. If the employer has not posted the form, the Division Chief may postpone the informal conference until such action is taken.

F. Conduct of the Informal Conference:

1. Conference Subjects: At the Informal Conference, Division Chief or designee may discuss the purpose of the conference, settlement of any issues raised by an inspection, citation and notice of proposed penalty, or notice of intention to contest, settlement of any issue, rights of participants, contest rights and time constraints, limitations, potential for settlements of citations and other relevant information.

   If the conference is requested by the employer, an affected employee or their representative shall be afforded an opportunity to participate, at the discretion of the Division Chief or designee.

   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 Division Chief or designee.

Parties may be represented by counsel at the conference.

2. Subjects Not to be Addressed: No opinions regarding the legal merits of an employer's case shall be discussed. No discussion concerning the potential for referral of fatality inspections for criminal prosecution under the Act.

3. Closing Remarks: At the conclusion of the conference, all main issues and potential courses of action will be summarized and documented. A copy of the summary and any notes will be placed in the case file.

7-3 PETITION FOR MODIFICATION OF ABATEMENT (PMA)

An employer may file a petition for modification of abatement date when it has made a good faith effort to comply with abatement requirements, but such abatement has not been completed due to circumstances beyond its reasonable control. If the employer requests additional abatement time after the 15 working day contest period has passed, the following procedures for PMAs are to be observed. Reference: Part 350.160 of the Administrative Rules.

A. **Filing:** A written PMA (oral PMAs are not accepted) must be received by IL OSHA no later than the close of the next working day following the date on which abatement was originally required. A late petition may be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay.

B. **Where Filing Requirements Are Not Met:** If the employer's written PMA does not meet all the Administrative Rules requirements, the employer shall be contacted within 10 working days and notified of the missing elements. A reasonable amount of time for the employer to respond shall be specified during this contact.

    1. If no response is received or if the information returned is still insufficient, a second attempt (by telephone, e-mail, or in writing) shall be made. The employer shall be informed that if it fails to respond in a timely or adequate manner, the PMA will not be granted, and the employer may be found to not have abated.

    2. If the employer responds satisfactorily and the Regional Enforcement Manager determines that the requirements for a PMA have been met, that finding shall be documented in the case file.

    3. Although IL OSHA policy is to handle PMAs timely, there may be cases where the REM's decision may be delayed because of deficiencies in the PMA, the need to conduct a monitoring inspection and/or a request for upper management involvement. Requests for additional time (e.g., 45 days) for the REM to reach a decision shall be sent to the Division Chief. A letter conveying this request shall be simultaneously sent to the employer and the employee representatives.

C. **PMA Review Process:**

1. The employer submits a PMA to IL OSHA. The same day, the employer shall post a copy of the PMA at their establishment. This allows employees an opportunity to review the PMA and file an objection, if desired.

2. Employees can file an objection within 10 working days of the PMA being posted. See section D. Failure to file an objection shall constitute a waiver of any further right to object to the petition.

3. IL OSHA shall not exercise approval power until 15 working days after the PMA is received from the employer.

4. If the PMA requests an abatement date that is two years or less from the issuance date of the citation, the Regional Enforcement Manager has the authority to approve or object to the petition.

5. Any PMA requesting an abatement date that is more than two years from the issuance date of the citation requires the approval of the Division Chief.

6. If the PMA is approved, the Regional Enforcement Manager shall provide a signed PMA to the assigned inspector. The assigned inspector shall provide the PMA to the employer.

7. The Regional Enforcement Manager or Division Chief (as appropriate) after consultation with the Legal Division, shall object to a PMA where the evidence supports non-approval (e.g., employer has taken no meaningful abatement action at all or has otherwise exhibited bad faith). Both the employer and the employee representatives shall be notified of this action by letter, with return receipt requested.
    - Letters notifying the employer or employee representative of the objection shall be mailed on the same date.
    - When appropriate, after consultation with the Legal Division, a failure to abate notification may be issued in conjunction with the objection to the PMA.

8. All OIS entries regarding the PMA process shall be performed by the Regional Enforcement Manager.

D. Employee Objection to PMA: Affected employees or their representatives may file a written objection to an employer's PMA with the Division Manager or designee within 10 working days of the date of posting of the PMA by the employer or its service upon an authorized employee representative.

1. Failure to file such a written objection with the 10 working day period constitutes a waiver of any further right to object to the PMA.

2. If an employee or an employee representative objects in writing to the extension of the abatement date, all relevant documentation shall be sent to the ALJ.
    - Confirmation of this action shall be mailed (return receipt requested) to the objecting party as soon as it is accomplished.

    - Notification of the employee objection shall be mailed (return receipt requested) to the employer on the same day that the case file is forwarded to the ALJ.
3. When any petition is objected to by the Director or affected employees, the petition, citations, and any objections shall be forwarded to the Chief Administrative Law Judge within 3 working days after the expiration of the 15 day period set forth in this section.

7-4 IL OSHA ABATEMENT VERIFICATION

Reference: Part 350.210 of the Administrative Rules.

A. Important Terms and Concepts

1. Abatement: Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by IL OSHA during an inspection.

2. Abatement Certification: Within 10 days of the abatement date, Employers must certify that abatement is complete for each cited violation. The written certification must include: the employer's name and address; the inspection number; the citation and item numbers; a statement that the information submitted is accurate; signature of the employer or employer's authorized representative; the date and method of abatement for each cited violation; and a statement that affected employees and their representatives have been informed of the abatement.

3. Abatement Documents: Documentation submitted to the Division Chief must establish that abatement has been completed, and may include but are not limited to evidence such as the purchase or repair of equipment, photographic or video evidence of abatement or other written records verifying correction of the violative condition.

4. Affected Employee: Affected employee means those employees who are exposed to the hazards(s) identified as violation(s) in a citation.

5. Final Order Dates (uncontested): For uncontested violations, the final order date is the day following the fifteenth working day after the employer's receipt of the citation.

6. Final Order Dates (contested): For contested violations,
    - The thirtieth day after the date on which a decision or order of an administrative law judge has been docketed; or
    - Where review has been directed, the thirtieth day after the date on which the ALJ issues its decision or order disposing of all or pertinent part of a case; or
    - The date on which an appeals court issues a decision affirming the violation in a case in which a final order of the ALJ has been stayed.

7. Final Order Dates (Informal Settlement): The final order date is when, within the 15 working days to contest a citation, the Informal Settlement Agreement is signed by both parties.

8. Abatement Dates (uncontested): For uncontested citations, the abatement date is the later of the following dates: The abatement date identified in the citation; The extended date established as a result of an employer's filing for a Petition for Modification of Abatement (PMA); or The date established by an informal settlement agreement.

9. Abatement Dates (contested): For contested citations for which the ALJ has issued a final order, the abatement date is the later of the following dates: The date identified in the final order for abatement; Where there has been a contest of a violation or abatement date (not penalty), the date computed by adding the period allowed in the citation for abatement to the final order date; or The date established by a formal settlement agreement.

10. Abatement Dates (contested penalty only): Where an employer has contested only the proposed penalty, the abatement period continues to run unaffected by the contest. The abatement period is subject to the time periods set forth above.

11. Moveable Equipment: Movable equipment means a hand-held or non-hand-held machine or device, powered or non-powered, that is used to do work and is moved within or between worksites. Hand-held equipment is equipment that is hand-held when operated and can generally be picked up and operated with one or two hands, such as a hand grinder, skill saw, portable electric drill, nail gun, etc.

12. Worksite: For enforcing the Abatement Verification regulation, the worksite is the physical location specified within the "Alleged Violation Description" of the citation. If no location is specified, the worksite shall be the inspection site where the cited violation occurred.

B. Written Certification: Employers who have received a citation(s) for violation(s) of the Act are to certify in writing that they have abated the hazardous condition for which they were cited and to inform affected employees of their abatement actions.

C. Verification Procedures: The verification procedures to be followed by an employer

depend on the nature of the violation(s) identified and the employer's abatement actions. The abatement verification regulation establishes requirements for the following:

1. Abatement Certification
2. Abatement Documentation
3. Abatement Plans
4. Progress Reports
5. Tagging for Movable Equipment

D. Supplemental Procedures: Where necessary, IL OSHA supplements these procedures with follow-up inspections and on-site monitoring inspections.

E. Requirements: Except for the application of warning tags or citations on movable equipment, the abatement verification regulation does not impose any requirements on the employer until a citation item has become a final order. For moveable hand-held equipment, the warning tag or citation must be attached immediately after the employer receives the citation. For other moveable equipment, the warning tag or citation must be attached prior to moving the equipment within or between worksites.

7-5 ABATEMENT CERTIFICATION

Reference 350.210 c) Abatement Certification

A. **Minimum Level:** Abatement certification is the minimum level of abatement verification and is required for all violations once they become final orders. An exception exists where the inspector observed abatement during the on-site portion of the inspection within 24 hours and the violation is listed on the citation as “Corrected During Inspection (CDI)”.

B. Certification Requirements: The employer's written certification that abatement is complete must include the following information for each cited violation:

1. The date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement;
2. The employer's name and address;
3. The inspection number to which the submission relates;
4. The citation and item numbers to which the submission relates;
5. A statement that the information submitted is accurate;

6. The signature of the employer or the employer's authorized representative; and

7. A statement that the employees and their representatives have been notified.

C. Certification Timeframe:

1. All citation items which have become final orders, regardless of their characterizations, require written abatement certification within 10 calendar days of the abatement date.

2. A PMA received and processed in accordance with the Administrative Rules will suspend the 10-day period for receipt of the abatement certification for the item for which the PMA is requested.

3. Thus, no citation will be issued for failure to submit the certification within 10 days of the abatement date.

4. If the PMA is denied, the 10-day period for submission to IL OSHA begins on the day the employer receives notice of the denial.

7-6 ABATEMENT DOCUMENTATION

Reference 350.210 d) Abatement Documentation

More extensive documentation of abatement is required for the most serious violations. When a violation requires abatement documentation, in addition to certifying abatement, the employer must submit documents demonstrating that abatement is complete.

A. Required Abatement Documentation: Documentation is required for willful violations, repeat violations and serious violations where IL OSHA determines that such documentation is necessary as indicated on the citation.

B. **Adequacy of Abatement Documentation:** Documentation must be accurate and describe or portray the abated condition adequately. It may be submitted in electronic form. IL OSHA will assess the adequacy of the documentation submitted. Abatement documents shall be retained. Abatement documents containing sensitive information (trade secrets, protected health information) that are not directly related to verifying abatement will be destroyed. Examples of abatement documents include but are not limited to:

- Photographic or video evidence of abatement;

- Evidence of the purchase or repair of equipment;

- Evidence of actions taken to abate;

- Bills from repair services;

- Reports or evaluations by safety and health professionals describing the abatement of the hazard or a report of analytical testing;

- Documentation from the manufacturer that the article repaired is within the manufacturer's specifications;

- Records of training completed by employees if the citation is related to inadequate employee training; and

- A copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer's respirator or hazard communication program.

C. Inspector Observed/Verified Abatement Prior to Citation Issuance:

1. In accordance with 350.210(c)(2)(A) of the Administrative Rules, citations will not be included in the abatement certification for violations employers promptly abate within 24 hours after the violation is identified. Inspectors will note this as "corrected during inspection" in the Abatement Status of OIS.

   AVD language for citation: "Violation was corrected during the inspection and no further action is needed by the employer."

2. Inspectors may verify abatement of a violative condition prior to the issuance of citations. If the abatement takes place after the 24-hour period mentioned above, this will **not** be considered "corrected during the inspection." No abatement status will be selected in OIS prior to issuance. When available, as a selection under Abatement Status, "Abatement completed" will be selected.

   AVD language for citation: "Violation was corrected before the citation was issued. A signed abatement certification is required to complete abatement."

7-7 MONITORING DURING ABATEMENT PERIODS GREATER THAN 90 DAYS

A. Abatement Periods Greater than 90 Days: In accordance with 350.210(e) of the Administrative Rules, for abatement periods greater than 90 calendar days, the Division Manager has discretion to either require or not require abatement plans and progress reports. Progress reports may not be required unless abatement plans are required. Requirements for abatements plans and progress reports are done on a citation-by-citation basis. Any requirement must be indicated in the citation. The Division Manager may not require an abatement plan for abatement periods less than 91 days or for citations characterized as other-than-serious.

B. **Abatement Plans:** Within 25 calendar days from the final order date, the employer may also be required to submit abatement plans for each violation that identify the steps to be taken to achieve abatement and the proposed dates of each step. When required by IL OSHA, the plan must also include detailed interim measures for protecting employees until abatement is complete.

C. **Progress Reports:** If an employer is required to submit an abatement plan, they may also be required to submit periodic progress reports for each violation. If required by IL OSHA, the citation must indicate the dates that the initial and any subsequent (if necessary) progress reports are due. The initial progress report can be submitted no sooner than 30 calendar days after the due date of the abatement plan.

D. **Special Requirements for Long-Term Abatement:** Long-term abatement is considered abatement over one year from the citation issuance date. IL OSHA requires an abatement plan and progress reports for abatement dates over one year.

E. **Failure to Submit Abatement Plans or Progress Reports:** Use the process in section 7-8(A) if an employer fails to submit an abatement plan or progress report within 13 calendars days after the due date.

7-8 EMPLOYER FAILURE TO SUBMIT REQUIRED ABATEMENT CERTIFICATION

A. **Actions Preceding Citation for Failure to Certify Abatement:** In an effort to decrease the frequency of employers' failure to submit required abatement certifications, the inspector should contact the employer (and note in the diary if this is via e-mail or phone, etc.) the within one week before the abatement is due reminding them of the certification requirement. The inspector should also inform the employer about a PMA if applicable.

    1. 13 calendar days after the abatement date call the employer and tell them that a citation may be issued if certification is not received within 7 calendar days. Inform the employer that a late PMA may be accepted with an employer's statement of exceptional circumstances. Issue a follow-up letter the same day of the call.

    2. After 7 calendar days issue a single, other-than-serious citation for failure to certify abatement.

B. **Citation for Failure to Certify:** If the process above is followed, a single other-than-serious citation under the same inspection number can be issued without any additional on-site inspection. The abatement date for the new citation will be set 30 calendar days from the date of issuance. This process only applies to the abatement certification.

C. **Certification Omissions:** Minor discrepancies on an abatement certification can be considered de minimis. No action is required. If the employer fails to sign the certification, it should be returned for signature.

7-9 TAGGING FOR MOVABLE EQUIPMENT

Reference: Part 350.210(i) Movable Equipment

A. **Tag Related Citations:** These violations must be observed by inspectors prior to the issuance of a citation for failure to initially tag cited moveable equipment. If there is insufficient evidence to support a violation of the employer's initial failure to tag the movable equipment, a citation may be issued for failure to maintain the tag.

B. **Equipment Which is Moved:** Tags are intended to provide an interim form of protection to employees through notification for those who may not know of the citation or the hazardous condition.

    1. Non hand-held equipment: Inspectors should make every effort to document the initial location of cited equipment because the tagging provision is trigged upon movement of the equipment.

    2. Hand-held equipment: Employers must attach a warning tag or copy of the citation immediately after the employer's receipt of the citation. The attachment of the tag is not dependent on any subsequent movement of the equipment.

7-10 FAILURE TO NOTIFY EMPLOYEES BY POSTING

Inspectors shall investigate an employer's failure to notify employees by posting. Failure to post shall be cited under the Part 350 Administrative Rules.

7-11 ABATEMENT VERIFICATION FOR SPECIAL ENFORCEMENT

A. **Construction Activity Considerations:** Construction site closure or hazard removal can be accepted as abatement without certification only if the inspector can verify the closure or removal. This does not have to be on-site verification. For example, the inspector may verify through [insert examples]. In all other circumstances abatement certification is required.

    1. Equipment and program-related violations always require abatement certification.

    2. Violations that are identified as routine for an employer require abatement certification.

B. **Follow-Up Policy for Employer Failure to Verify Abatement:** Follow-up or monitoring inspections will not normally be conducted when evidence of abatement is provided by the employer. If the employer has not submitted abatement certification or documentation, or inadequate documentation within the permitted time, the Division Chief has discretion to conduct a follow-up inspection. The inspection should not occur before the end of the 15-day contest period except in exceptional circumstances.

7-12 ON-SITE VISITS: ABATEMENT VERIFICATION AND MONITORING

A. **Severe Injury Reporting Monitoring of Closed RRIs:** IL OSHA may conduct monitoring inspections of closed Rapid Response Investigations based on a randomized selection of closed investigations. The partial scope monitoring inspection is to ensure accuracy of the previously reported condition. IL OSHA will not use the employer's internal investigation to cite a condition(s) discovered by the employer during its internal investigation if employees are not exposed to a serious hazard and the employer is taking diligent steps to correct the condition. Reference: https://www.osha.gov/dep/enforcement/Interm_Enforcement_Procedures.html

B. **Monitoring of Closed Complaints:** IL OSHA may conduct monitoring inspections of closed complaints based on a randomized selection of closed complaints regarding hazards that could recur. The partial scope monitoring inspection is to ensure accuracy of the previously reported condition. IL OSHA will not use the employer's internal investigation to cite a condition(s) discovered by the employer during its internal investigation so long as employees are not exposed to a serious hazard and the employer is taking diligent steps to correct the condition.

C. **Initial Follow-Up:** The first follow-up is the first inspection after issuance of a citation. If a previously cited violation is found unabated, or an employer fails to comply with interim or multi-step abatement dates, the inspector shall inform the employer that they are subject to a Notification of Failure to Abate Violation and proposed penalties until the violation is abated.

D. **Second Follow-Up:** If, after the abatement period for the Notification of Failure to Abate Violation passes without abatement, a second follow-up inspection may be initiated under the same process as the initial follow-up. This should be done in consultation with the Legal Division.

E. **Follow-Up Inspection Reports:** Follow-up inspections will receive a new OIS number and new case file but will be linked to the original inspection in OIS. Follow-up inspection documentation and procedures are the same as any inspection.

F. **Summary Enforcement Action:** There may be times during the initial follow-up when, because of an employer's flagrant disregard of a citation or other factors, it will be apparent that traditional enforcement actions would be inappropriate or ineffective. In such cases, a summary enforcement action shall be initiated. The Regional Enforcement Manager shall notify the Division Manager, in writing, of all the particular circumstances of the case for referral to the Legal Division.

7-13 MONITORING INSPECTIONS

A. **General: Where longer periods of time are need to establish an employer's compliance, m**onitoring inspections will be conducted to ensure that hazards are being corrected and employees are being protected.

B. **Conduct of Monitoring Inspection (PMAs and Long-Term Abatement):** An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following reasons:

1. To determine progress an employer is making toward final correction.

2. Ensure target dates of multi-step abatement are met.

3. Ensure PMA dates are made in good faith and the employer has attempted to implement necessary controls.

4. Ensure employees are properly protected until final abatement.

5. Ensure terms of a permanent variance are being carried out.

6. Provide abatement assistance for items under citation.

7. Triggered by an abatement date in excess of one year.

C. Monitoring Abatement Efforts:

1. The Division Manager shall take the steps necessary to ensure that the employer is making a good faith attempt to bring about abatement as expeditiously as possible.

2. Where engineering controls have been cited or required for abatement, a monitoring inspection may be scheduled to evaluate the employer's abatement efforts.

3. Where no engineering controls have been cited but more time is needed for other reasons not requiring assistance from IL OSHA, such as delays in receiving equipment, a monitoring visit need not normally be scheduled.

4. Monitoring inspections shall be scheduled as soon as possible after the initial contact with the employer and shall not be delayed until actual receipt of the PMA.

5. Inspectors shall decide during the monitoring inspection whether sampling is necessary and, if so, to what extent. Examples of sampling include but not limited to: spot sampling, short-term sampling, or full-shift sampling.

6. Inspectors shall include relevant and applicable findings in the narrative along with recommendations for action. To reach a valid conclusion when recommending action, it is important to have all the relevant factors available in an organized manner. The factors to be considered may include, but are not

limited to the following:

- Progress reports or other indications of the employer's good faith, demonstrating effective use of technical expertise and/or management skills, accuracy of information reported by the employer, and timeliness of progress reports.

- The employer's assessment of the hazards by means of surveys performed by in-house personnel, consultants, and/or the employer's insurance agency.

- Other documentation collected including verification of progress reports, success and/or failure of abatement efforts, and assessment of current exposure levels of employees.

- Employer and employee interviews.

- Specific reasons for requesting additional time including specific plans for controlling exposure and specific calendar dates.

- Personal protective equipment.

- Medical programs.

- Emergency action plans.

7-14 CASE FILE MANAGEMENT

A. **Closing the Case File Without Abatement Certification:** The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Division Chief or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation.

B. **Whether to Keep Abatement Documentation:** Abatement documentation shall be retained in the case file. Documentation with sensitive information (trade secrets, protected health information) shall be reviewed by the inspector and Regional Enforcement Manager for elimination from the case file if it is not necessary for abatement verification.

7-15 ABATEMENT SERVICES AVAILABLE TO EMPLOYERS

Employers requesting abatement assistance shall be informed that IL OSHA is willing to work with them even after citations have been issued based on specific circumstances and available resources.

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Chapter 8: Settlements
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

8-1 INTRODUCTION

The Division Chief is granted settlement authority and shall follow these instructions when negotiating settlement agreements.

All language in this chapter is considered a procedure unless noted otherwise.

A. General

1. Except for cases that affect other jurisdictions, the Division Chief may enter into Informal Settlement Agreements with employers prior to the employer filing a formal written notice of contest.

   NOTE: After the employer has filed a written formal notice of contest, the Division Chief may proceed toward a Formal Settlement Agreement with the concurrence and participation of the Legal Division.

2. The Division Chief may amend abatement dates, reclassify violations, and modify or withdraw a penalty, a citation, or a citation item, where evidence establishes during the informal conference that the changes are justified.

3. The Division Chief may actively negotiate the amount of proposed penalties, depending on the circumstances of the case and the particular improvements in employee safety and health that can be obtained.

4. Employers shall be informed that they are required to post copies of all amendments or changes to citations resulting from informal conferences. Employee representatives must also be provided with copies of any agreements. Reference: Part 350.220 of the Administrative Rules.

B. Pre-Contest Settlement (Informal Settlement Agreement): Pre-contest settlement discussions will generally occur during or immediately following the informal conference and prior to the expiration of the 15 working day contest period.

1. If an employer is bringing an attorney to an informal conference, the Division Chief or their designee is encouraged to contact the Legal Division and ask for the assistance of counsel.

2. If a settlement is reached during the informal conference, an Informal Settlement

Agreement (ISA) shall be prepared and the employer will be asked to sign it. It will be effective upon signature of both the employer and the Division Chief (who shall sign last), provided the contest period has not expired. Both parties will date the documents on the day of actual signature.

3. If the employer is not present to sign the ISA, IL OSHA shall send the agreement to the employer for signature. After signing, the employer must return the agreement to IL OSHA within the 15 day contest period.

    - In every case, the Division Chief shall give employers notice in writing that the citation will become final and unreviewable at the end of the contest period, unless the employer signs the proposed agreement or files a written notice of contest.

    - If an employer wishes to make any changes to the text of the agreement, the Division Chief must agree to and authorize the proposed changes prior to the expiration of the contest period.

    - If the changes proposed by the employer are acceptable to the Division Chief, the exact language written into the agreement shall be mutually agreed upon. Employers shall be instructed to incorporate the agreed-upon language into the agreement, sign it, and return it.

    - Annotations incorporating the exact language of any changes authorized shall be made to the retained copy of the agreement and signed and dated by the Division Chief.

    - Upon receipt of the ISA signed by the employer, the Division Chief will ensure, prior to his/her signature that any modifications to the agreement are consistent with the notations made in the case file.

    - In these cases, the citation record will then be updated in the inspection database in accordance with current procedures.

    - If an employer's changes substantially alter the original terms, the agreement signed by the employer will be treated as a notice of contest and handled accordingly. The employer will be informed of this as soon as possible.

    - A reasonable time will be allowed for return of the agreement from the employer.

    - If an agreement is not received within the 15-day contest period, the Division Chief will presume the employer did not sign the agreement, and the citation will be treated as a final order.

- The employer will be required to certify that the informal settlement agreement was signed prior to the expiration of the contest period.

4. If settlement efforts are unsuccessful and the employer contests the citation, the Division Chief will state the terms of the final settlement offer in the case file.

C. Procedures for Preparing the Informal Settlement Agreement: The ISA shall be prepared and processed in accordance with current IL OSHA policies and practices.

D. Post-Contest Settlement (Formal Settlement Agreement):

1. Following the filing of a notice of contest, the Division Chief shall (unless other procedures have been agreed upon) notify the Legal Division when it appears that negotiations with the employer may produce a settlement. This notification shall occur at the time the notice of contest transmittal memorandum is sent to the Legal Division.

2. If a settlement is later requested by the employer, the Division Chief will communicate the proposed terms to the Legal Division, who will then draft and execute the agreement.

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Chapter 9: Complaint, Referral and Whistleblower Processing
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

9-1 Safety and Health Complaints and Referrals

All language in this chapter is considered a procedure unless noted otherwise.

A. Definitions

1. Complaint: Notice of an alleged safety or health hazard (over which IL OSHA has jurisdiction), or a violation of the Illinois Occupational Safety and Health Act, submitted by a current employee or representative of employees.

2. Formal Complaint: Complaint made by a current employee or a representative of employees that meets **all** of the following requirements: (1) Asserts that an imminent danger, a violation of the Act, or a violation of an IL OSHA Standard exposes employees to a potential physical or health harm in the workplace; (2) Is reduced to writing or submitted on an IL OSHA complaint form (paper or electronic); and (3) Is signed (paper or electronic) by at least one current employee or employee representative.

3. Non-formal Complaint: Any complaint alleging safety or health violations that does not meet all the requirements of a formal complaint identified above and does not come from one of the sources identified under the definition of Referral, below.

4. Inspection: An examination (almost always on-site) of an employer's worksite/workplace conducted by an IL OSHA inspector.

5. Inquiry: A process conducted in response to a complaint or a referral that does not meet one of the identified inspection criteria in section B. It does not involve an onsite inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by email, letter, or phone. The employer is then requested to provide a response, and IL OSHA will notify the complainant of that response via appropriate means. An unsatisfactory employer response may prompt an inspection.

6. Electronic Complaint (forwarded): A complaint submitted via federal OSHA's public website and forwarded to IL OSHA. All complaints submitted via federal OSHA's public website are considered non-formal.

7. Electronic Complaint (IL OSHA website): A complaint submitted via IL OSHA's

website using the "Online Complaint Form." When this form is properly completed, electronically signed, and submitted by a current employee or employee representative, it is considered a formal complaint.

8. Permanently Disabling Injury or Illness: An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.

9. Referral (IL OSHA Inspector): Information based on the direct observation of an inspector. This observation must be in writing.

10. Referral (Safety and health agency referral): From sources including, but not limited to: federal OSHA, consultation, state or local health departments, and other State and Local Government health and safety officials.

11. Referral (Discrimination complaint referral): Made by a whistleblower investigator when an employee alleges that he or she was retaliated against for complaining about safety or health conditions in the workplace, refusing to do an allegedly imminently dangerous task, or engaging in other activities related to occupational safety or health.

12. Referral (Other government agency referral): Made by other Federal, State, or local government agencies or their employees, including local police and fire departments.

13. Referral (Media): News items reported in the media or information reported directly to IL OSHA by a media source.

14. Referral (Employer report): Employer reported incidents other than fatalities/catastrophes.

15. Representative of Employees: (1) An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization. (2) b. An attorney acting for an employee. (3) Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

    NOTE: The representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

B. Criteria Warranting an Inspection: An inspection is normally warranted if at least one of the conditions below is met:

1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on an IL OSHA complaint form (paper or electronic), be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity. Additionally, there must be reasonable grounds to believe either that a violation of the Act or IL OSHA standard that exposes employees to physical harm exists, or that an imminent danger of death or serious injury exists.

2. The information received in a signed, written complaint from a current employee or employee representative that alleges a recordkeeping deficiency that indicates the existence of a potentially serious safety or health violation.

3. The information alleges that a permanently disabling injury or illness has occurred because of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exists.

4. The information alleges that an imminent danger situation exists (see chapter 10).

5. The information concerns an establishment and an alleged hazard covered by an adopted local, regional, or national emphasis program.

6. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s). The evidence must be descriptive of current, on-going or recurring hazardous conditions.

7. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations during the past five years, or is an establishment or related establishment. If the employer has previously submitted adequate documentation for these violations demonstrating that they were corrected and that programs have been implemented to prevent a recurrence of hazards, the Regional Enforcement Manager will normally determine that an inspection is not necessary.

8. A whistleblower investigator requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace, refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health.

9. If the information gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a

serious hazard, an on-site inspection will be initiated if the information relates to construction, or other entities as determined by the Regional Enforcement Manager. A referral to Fair Labor Standards would also be initiated.

C. **Electronic Complaints Forwarded from Federal OSHA:** Forwarded complaints will be received by IL OSHA and sent to the appropriate Regional Enforcement Manager. These complaints will be considered non-formal until a valid complainant (employee or representative of employee as defined in section A) submits a signed IL OSHA complaint form (paper or electronic) that meets all requirements of a formal complaint. It is the REM's responsibility to follow up with the complainant and give them the opportunity to formalize the complaint.

D. **Electronic Complaints Received from the IL OSHA Website:** These complaints will be forwarded to the appropriate Regional Enforcement Manager. A complaint will be considered formal if it meets all requirements of a formal complaint.

E. **Information Received by Telephone:** IL OSHA personnel will speak with the caller to assess the nature of the situation and see if the situation describes an apparent violation of the Act or IL OSHA standards. For situations outside of IL OSHA jurisdiction, IL OSHA will attempt to refer the caller to the appropriate authority. A complaint that appears to be valid that is received via telephone will be considered non-formal. The complainant will be encouraged to formalize their complaint by submitting an IL OSHA complaint form (paper or electronic). IL OSHA will explain the complaint process to the caller, the ability to remain anonymous, whistleblower protections, and attempt to address any other concerns that the caller may have.

F. **Imminent Danger:** If IL OSHA receives information of an imminent danger situation (regardless of how it is received), follow imminent danger procedures in Chapter 10.

G. **Difference Between a Formal, Non-Formal Complaint and a Referral:**

1. An inspection or inquiry **can** be initiated from a formal complaint as the initial action by IL OSHA.

2. An inspection **cannot**, but an inquiry **can** be initiated from a non-formal complaint as the initial action by IL OSHA.

3. An inspection or inquiry **can** be initiated from a valid referral as defined in section A as the initial action by IL OSHA.

H. **Regional Enforcement Manager Process (non-formal complaints):** Upon receipt of a non-formal complaint, the REM will evaluate all available information to determine whether there are reasonable grounds to believe that a violation exists. If necessary, reasonable attempts will be made to contact the individual who provided the information and/or the employer in order to obtain additional details or to clarify issues raised in the complaint. At this point, the REM can:

1. Determine that the condition is being or has been abated and take no further action. The determination will be documented in OIS.

2. Determine that there are no reasonable grounds that a violation or hazard exists and take no further action. The determination will be documented in OIS.

3. Determine that the complaint is not within the jurisdiction of IL OSHA and refer it to the appropriate authority. The determination will be documented in OIS.

4. If valid conditions exist, encourage the complainant to formalize the complaint within five days. In the interim, the REM can proceed with an inquiry.

5. If valid conditions exist, encourage the complainant to formalize the complaint within five days. The REM can initiate an inspection upon receipt of a formal complaint if the formal complaint meets at least one of the criteria in section B and there are reasonable grounds to believe that a hazard or violation exists. Inspections will be initiated as soon as resources permit, normally within ten working days.

I. **Regional Enforcement Manager Process (formal complaints and referrals):** Upon receipt of a formal complaint or valid referral, the REM will evaluate all available information to determine whether there are reasonable grounds to believe that a violation exists. If necessary, reasonable attempts will be made to contact the individual who provided the information and/or the employer to obtain additional details or to clarify issues raised in the complaint or referral. At this point, the REM can:

1. Determine that the condition is being or has been abated and take no further action. The determination will be documented in OIS.

2. Determine that there are no reasonable grounds that a violation or hazard exists and take no further action. The determination will be documented in OIS.

3. Determine that the complaint or referral is not within the jurisdiction of IL OSHA and refer it to the appropriate authority. The determination will be documented in OIS.

4. Proceed with an inquiry.

5. Initiate an inspection if the formal complaint meets at least one of the criteria in section B and there are reasonable grounds to believe that a hazard or violation exists. An Inspection will be initiated as soon as resources permit, normally within ten working days.

J. Procedures for an Inquiry:

1. A REM initiating an inquiry will ensure the employer is contacted via letter, e-mail, or phone. Correspondence will include the alleged condition(s) and/or violation(s), a request for the employer to investigate the alleged condition(s) and/or violation(s) and the information and/or documentation and/or corrective action needed by IL OSHA to answer the inquiry.

2. IL OSHA will request a response from the employer within five working days. The REM has discretion to require a shorter or longer response time. NOTE: The employer is not required, but will be encouraged, to complete abatement action within the response timeframe, if possible.

3. The employer is required to post a copy of the correspondence where it is readily accessible by all employees of the establishment.

4. The employer is required to return a copy of the signed Certificate of Posting to IL OSHA.

5. The employer is required to provide a copy of the IL OSHA correspondence and the employer response to any recognized employee union or safety and health committee at the establishment.

6. Valid complainants will receive initial, intermediate, and closing correspondence during the inquiry process.

K. Inquiry Outcomes:

1. If the employer responds satisfactorily, the complainant does not dispute the response and the hazard is abated, the inquiry can be closed.

2. If the employer responds satisfactorily but a valid complainant (employee or representative of employees as defined in section A) disputes the response, see section L, Inquiry Disputes.

3. The employer requests additional time to respond. The administrative assistant can authorize an additional five working days. The REM can authorize additional time over five working days.

4. The employer provides an inadequate response, responds after the allotted period, or fails to respond. The REM can initiate an inspection **or** request a subsequent employer response within an allotted period.

L. Inquiry Disputes:

1. All inquiry disputes must take place within ten working days of the date of the

notification from IL OSHA to the complainant. After the ten-day period, IL OSHA will take no further action and consider the matter closed.

2. If a complainant **is** a current employee or a representative of employees as defined in section A, they can dispute the employer's response and/or the determination by IL OSHA. The dispute must be signed and submitted in writing. This will be considered a formal complaint. If the REM determines the dispute has merit, the REM can initiate an inspection or request an additional response from the employer. If the dispute does not have merit, the complainant will be informed of that determination in writing.

3. If a complainant **is not** a current employee or a representative of employees as defined in section A, their ability to dispute is limited. The REM can deny the dispute, initiate an inspection, or request additional response from the employer.

4. If the complainant **is** a current employee or a representative of employees as defined in section A and they desire to initiate a second dispute, the following procedures apply as stated in Section 350.130 of the Administrative Rules:

   "If the Enforcement Supervisor 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 Section 350.120, he or she shall notify the complaining party in writing of that determination. The complaining party may obtain review of the determination by submitting a written statement of position to the Division Manager and, at the same time, providing the employer with a copy of the statement by certified mail. The employer may submit an opposing written statement of position with the Division Manager 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 Division Manager, at his or her discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Division Manager shall affirm, modify or reverse the determination of the Enforcement Supervisor and furnish the complaining party and the employer written notification of this decision and the reasons for the decision. The decision of the Division Manager shall be final and not subject to further review."

M. Complainant Protection:

1. Identity of the Complainant: **Upon request of the complainant, his or her identity will be withheld from the employer. No information will be given to the employer that would allow the employer to identify the complainant.**

2. In accordance with Section 350.120(d) of the Administrative Rules, complainants cannot be discriminated against or discharged for filing a complaint.

9-2 Whistleblower Complaints

See section 350.125, Discrimination Prohibited Against Employees, of the Administrative Rules for detailed procedures to process whistleblower complaints.

Basic information:

- An employee cannot be discharged or discriminated against because they have: filed a complaint under the Illinois Occupational Safety and Health Act (previous section), instituted or caused to be instituted any proceeding under the Act, testified or is about to testify under the Act, exercised rights afforded by the Act.

- A complaint must be made by an employee within 30 days after the violation occurs.

- Complaints cannot be anonymous.

- Complaints can be oral or in writing.

- As a general matter, there is no right afforded by the Illinois Occupational Safety and Health Act that entitles employees to walk off the job because of potential unsafe conditions at the workplace.

- Federal OSHA will refer private sector whistleblower complaints to IDOL.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 10: Imminent Danger, Fatality, Catastrophe, and Emergency Response

Effective Date: 1 December 2020
Revised: 1 October 2025 **Signed:**

10-1 Imminent Danger

All language in this chapter is considered a procedure unless noted otherwise.

A. General

1. Imminent Danger: Section 350.140 of the Administrative Rules defines imminent danger as: *"Whenever, and as soon as, an Enforcement Inspector/Officer concludes on the basis of an inspection that conditions or practices exist in any place of employment that could reasonably be expected to immediately cause death or serious physical harm or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by the Act."*

2. Conditions of Imminent Danger: The following conditions must be present for a hazard to be considered an imminent danger:

   - Death or serious harm must be threatened; AND

   - It must be reasonably likely that a serious accident could occur immediately OR, if not immediately, then before abatement would otherwise be implemented.

     NOTE: For a health hazard, exposure to the toxic substance or other hazard must cause harm to such a degree as to shorten life or be immediately dangerous to life and health (IDLH) or cause substantial reduction in physical or mental efficiency or health, even though the resulting harm may not manifest itself immediately.

B. Pre-Inspection Procedures:

1. Imminent Danger Report Received by the Field: After the Regional Enforcement Manager or designee receives a report of imminent danger, he or she will evaluate the inspection requirements and assign an inspector to conduct the inspection for a valid imminent danger situation. Every effort will be made to conduct the imminent danger inspection on the same day that the report is received. In any case, the inspection will be conducted no later than the day after the report is received.

When an immediate inspection cannot be made, the Regional Enforcement Manager or designee will contact the employer immediately (classified as an advance notice), obtain as many pertinent details as possible about the situation, and attempt to have any employee(s) affected by the imminent danger voluntarily removed, if necessary. A record of what steps, if any, the employer intends to take in order to eliminate the danger will be included in the case file.

2. Advance Notice: Section 350.70 of the Administrative Rules authorizes advance notice of an inspection in cases of apparent imminent danger to enable the employer to abate the danger as quickly as possible.

   Where advance notice of an inspection is given to an employer, it shall also be given to the authorized employee representative, if present. If the inspection is in response to a formal complaint, the complainant will be informed of the inspection unless this will cause a delay in speeding the elimination of the hazard.

C. **Imminent Danger Inspection Procedures:** All alleged imminent danger situations brought to the attention of or discovered by inspectors while conducting any inspection will be inspected immediately. Additional inspection activity will take place only after the imminent danger condition has been resolved.

1. Scope of Inspection: Inspectors may consider expanding the scope of an imminent danger inspection based on additional hazards discovered or brought to their attention during the inspection.

2. Procedures for Inspection: Every imminent danger inspection will be conducted as expeditiously as possible. Inspectors will offer the employer and employee representatives the opportunity to participate in the worksite inspection unless the immediacy of the hazard makes it impractical to delay the inspection in order to afford time to reach the area of the alleged imminent danger. As soon as reasonably practicable after discovery of existing conditions or practices constituting an imminent danger, the employer shall be informed of such hazards. The employer shall be asked to notify affected employees and to remove them from exposure to the imminent danger hazard. The employer should be encouraged to voluntarily take appropriate abatement measures to promptly eliminate the danger.

   - Procedure during working hours: If an inspector observes a hazardous and/or violative condition during their duties they may stop and make an informal inquiry with employees at the worksite if it is safe to do so. If the exposed employees are under IL OSHA jurisdiction the inspector must obtain permission from their supervisor prior to opening an inspection. If the exposed employees are under federal OSHA jurisdiction a referral will be made to the appropriate area office. All inquiries shall be entered as an UPA in OIS. Inspectors shall consider inspection priorities and efficient use of resources prior to making an inquiry (FOM 2-4 A,B).

- Procedure after hours: If an inspector observes an immediate or imminent threat that could be reasonably expected to cause death or serious physical harm before a formal inspection/investigation could be opened, they may stop and inform the employees at the worksite of the danger if it is safe to do so. The inspector shall contact their supervisor as soon as possible for additional guidance. If a supervisor cannot be reached, the inspector shall photograph or document the conditions and leave the worksite. If the exposed employees are under federal OSHA jurisdiction the inspector shall call 800-321-OSHA to report the condition. All imminent danger conditions shall be entered as an UPA in OIS.

D. Elimination of the Imminent Danger:

1. Voluntary Elimination of the Imminent Danger: Voluntary elimination of the hazard is accomplished when the employer 1) Immediately removes affected employees from the danger area; 2) Immediately removes or abates the hazardous condition; and 3) Gives satisfactory assurance that the dangerous condition will remain abated before permitting employees to work in the area.

2. Assurance of Elimination of the Imminent Danger: Assurance can be evidenced by after removing the affected employees, immediate corrective action is initiated, designed to bring the dangerous condition, practice, means or method of operation, or process into compliance, which, when completed, would permanently eliminate the dangerous condition; OR a good faith representation by the employer that permanent corrective action will be taken as soon as possible, **and** that affected employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; OR a good faith representation by the employer that permanent corrective action will be instituted as soon as possible. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued, and its use strictly enforced until the condition is permanently corrected.

   NOTE: Inspectors shall verify that employer representations are accurate.

3. Where a Hazard is Voluntarily Eliminated: If an employer voluntarily eliminates the imminent danger without unreasonable delay:

   - No imminent danger legal proceeding shall be instituted;

   - The Notice of an Alleged Imminent Danger Form, does not need to be completed.

   - An appropriate citation(s) and notice of penalty will be proposed for issuance with an appropriate notation on the violation worksheet to document corrective actions; and

- Inspectors will inform the affected employees or their authorized representative(s) that, although an imminent danger had existed, danger has been eliminated. They will also be informed of any steps taken by the employer to eliminate the hazardous condition.

4. Refusal to Eliminate and Imminent Danger: If the employer does not or cannot voluntarily eliminate the hazard or remove affected employees from the exposure and the danger is immediate, the Regional Enforcement Manager will immediately consult with the Division Chief to obtain permission to post a Notice of an Alleged Imminent Danger.

    - The Division Chief will then determine whether to consult with the Legal Division to obtain a Temporary Restraining Order (TRO).

    - The employer will be advised that Section 115 of the Illinois Occupational Safety and Health Act gives circuit courts the authority to restrain any condition or practice that poses an imminent danger to employees.

      NOTE: IDOL has no authority to order the closing of a worksite or to order affected employees to leave the area of the imminent danger or the workplace.

    - Inspectors will notify affected employees and the employee representative that a Notice of Alleged Imminent Danger has been posted and will advise them of the discrimination protections under the Illinois Occupational Safety and Health Act. Employees will be advised that they have the right to refuse to perform work in the area where the imminent danger exists.

    - The Regional Enforcement Manager and Division Chief, in consultation with the Legal Division, will assess the situation and, if warranted, make arrangements for the expedited initiation of court action, or instruct the inspector to remove the posting.

5. When Harm Will Occur Before Abatement is Required: If inspectors have clear evidence that harm will occur before abatement is required (i.e., before a final order of the ALJ in a contested case or before a TRO can be obtained), they will confer with the Regional Enforcement Manager to determine a course of action. As appropriate, an imminent danger notice may be posted at the time citations are delivered or even after the notice of contest is filed.

   NOTE: In some cases, the evidence may not support the finding of an imminent danger at the time of the physical inspection, but rather after further evaluation of the case file or presence of additional evidence.

10-2 Fatality and Catastrophe Investigations

A. Definitions

1. Fatality (FAT): A public employee death resulting from a work-related incident or exposure; in general, from an injury or illness caused by or related to a workplace hazard.

2. Catastrophe (CAT): The inpatient hospitalization of three or more employees resulting from a work-related incident or exposure; in general, from an injury or illness caused by a workplace hazard.

3. Hospitalization: Being formally admitted as an **inpatient** to a hospital or equivalent medical facility for examination, observation, or treatment.

4. Incident Requiring a Coordinated State Response: An incident involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one that presents potential employee injury and generates widespread media interest.

B. Initial Report

1. IL OSHA will receive a report from IEMA as IEMA telecommunicators manage the reporting hotline. The intake form for reportables is managed by IL OSHA. Upon e-mail receipt of the report from IEMA to DOL.Safety@illinois.gov the report will be forwarded to the appropriate region for further inquiry and determination.

2. The IL OSHA administrative employee will enter the reportable into OIS as an UPA. As much information as is known at the time of the initial report should be provided.

3. **If an inspection is assigned, a FAT/CAT inspection shall be opened within one working day of receipt of the IEMA report.**

C. Investigation Procedures

1. All work-related fatalities and catastrophes will be thoroughly evaluated by the Regional Enforcement Manager to determine the cause of the incident, and whether there is a potential for a violation of the Illinois Occupational Safety and Health Act. Absent unusual circumstances or special considerations, the REM will assign an inspection. For FAT/CATs, the inspection must be opened within one working day. For other reportable criteria, the inspection should be opened as soon as possible with high priority.

2. The REM determines the scope of the fatality/catastrophe inspection. All

inspections must be completed in an expeditious manner. An inspector does **not** to have the authority to secure an incident scene but can request cooperation from law enforcement or other involved agencies.

3. Inspections following fatalities or catastrophes should include video/photo/audio documentation and evidence when appropriate. **Inspectors conducting fatality inspections shall use the IL OSHA issued digital camera.**

4. Under no circumstances should IL OSHA personnel conducting fatality/catastrophe investigations be unprotected against a hazard encountered during an investigation. IL OSHA personnel must use appropriate personal protective equipment and take all necessary precautions to avoid and/or prevent occupational exposure to potential hazards that may be encountered.

D. Investigation Summary Report

1. The Investigation Summary Report is used to summarize the results of investigations of all events that involve fatalities, or other reportable criteria. An Investigation Summary Report must be entered and saved as final as soon as the agency becomes aware of a workplace fatality and determines that it is within its jurisdiction, even if most of the data fields are left blank. The information on this form enables the tracking of fatalities and summarizes circumstances surrounding the event. For fatality/catastrophe investigations, the Investigation Summary Report will be:

    - Opened at the beginning of the investigation and saved as final, even if most of the data fields are left blank, so that tracking of fatality/catastrophe investigations can be conducted in a close to "real time" fashion.

    - Modified as needed during the investigation to account for updated information.

    - Updated with all data fields completely and accurately completed at the conclusion of the investigation, including a thorough narrative description of the incident.

2. The Investigation Summary Report narrative must comprehensively describe the characteristics of the worksite; the employer and its relationship with other employers, if relevant; the employee task/activity being performed; the related equipment used; and other pertinent information in enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.

3. Only one Investigation Summary Report should be submitted for an incident, regardless of how many inspections take place. If a subsequent event occurs

during the inspection, a new Investigation Summary Report for that incident should be submitted.

EXAMPLE: A fatality occurs in employer's facility in August. Both a safety and health inspection are initiated. One Investigation Summary Report should be filed to summarize the results of the inspections that resulted from the August fatality. However, in September, while the employer's facility is still undergoing the inspections, a second fatality occurs. In this case, a second Investigation Summary Report should be submitted for the second fatality and an additional inspection should be opened.

4. Ensure the appropriate related event code (REC) if appropriate.

5. Ensure the Immigrant Language Questionnaire is completed if the victim does not speak English.

E. Interview Procedures

1. Identify and Interview Persons: Identify and interview **all** persons with firsthand knowledge of the incident, including first responders, police officers, medical responders, and management, as early as possible in the investigation. The sooner a witness is interviewed, the more accurate and candid their recollection will be. If an employee representative is actively involved in the inspection, he or she can serve as a valuable resource by assisting in identifying employees who might have information relevant to the investigation.

   Ensure the on-site supervisor(s) of the involved employee is thoroughly interviewed and the interview is thoroughly documented.

   Conduct employee interviews privately, outside the presence of the employer. Try to hold the interview at a location that is comfortable for the employee and conducive to conversation. Employees are not required to inform their employer that they provided a statement to IL OSHA.

   For fatality inspections, attempt to video record all interviews using the IL OSHA issued digital camera. Consent of the interviewee is required to audio/video record.

2. During the Interview:

   - Be sensitive and empathic to interviewees involved in a traumatic incident. Try to build rapport and be patient instead of immediately bombarding them with questions.

   - Give them a basic explanation of why you are inspecting. IL OSHA's mission is to ensure workers finish their shift safe and finish their career

healthy. When that does not happen, we want to know why and reduce the risk of it happening again. The IL OSH Act does not allow us to cite an employee, citations (if any) are for the employer.

- Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.

- Inform interviewees in a tactful and nonthreatening manner that making a false statement to an inspector during an investigation could be a criminal offense.

- When appropriate, reduce interviews to writing and have the interviewee sign the document. Transcribe video-and audio interviews and have the interviewee sign the transcription.

- Read the statement to the interviewee and attempt to obtain agreement. Note any refusal to sign or initial his/her statement.

- Ask the interviewee to initial any changes or corrections made to his/her statement.

- Advise interviewee of IL OSHA whistleblower protections.

- See chapter 3 for more information on interviews.

3. Informer's Privilege: The informer's privilege allows the government to withhold the identity of individuals who provide information about the violation of laws, including IL OSHA rules and regulations. The identity of interviewees will remain confidential to the extent possible. However, inform each interviewee that disclosure of his/her identity may be necessary in connection with enforcement or court actions. The informer's privilege also protects the contents of statements to the extent that disclosure would reveal the witness' identity.

   When the contents of a statement will not disclose the identity of the informant (i.e., statements that do not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply, such statements may be released. Inform each interviewee that his/her interview statements may be released if he or she authorizes such a release or if he or she voluntarily discloses the statement to others, resulting in a waiver of the privilege.

F. Investigation Documentation

1. Personal Data – Victim: Potential items to be documented include: Name; Address; Email address; Telephone; Age; Sex; Nationality; Job Title; Date of Employment; Time in Position; Job being done at the time of the incident;

Training for job being performed at time of the incident; Employee deceased/injured; Nature of injury – fracture, amputation, etc.; and Prognosis of injured employee.

2. Incident Data: Potential items to be documented include: How and why did the incident occur; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources, and whether the incident was work-related.

3. Equipment of Process Involved: Potential items to be documented include: Equipment type; Manufacturer; Model; Manufacturer's instructions; Kind of process; Condition; Misuse; Maintenance program; Equipment inspection (logs, reports); Warning devices (detectors); Tasks performed; How often equipment is used; Energy sources and disconnecting means identified; and Supervision or instruction provided to employees involved in the accident.

4. Witness Statements: Potential witnesses include: the Public; Fellow employees; Management; Emergency responders (e.g., police department, fire department); and Medical personnel (e.g., medical examiner).

5. Safety and Health Program: Potential questions include: Does the employer have a safety and/or health program? Does the program address the type of hazard that resulted in the fatality/catastrophe? How are the elements of the program specifically implemented at the worksite?

6. Multi-Employer Worksite: Describe the contractual and in practice relationships of the employer with the other employers involved with the work being performed at the worksite, if applicable. Inspectors should contact their Regional Enforcement Manager if other employers fall outside of IL OSHA jurisdiction.

7. Records Request: Potential records include: Disciplinary Records; Training Records.

8. Next of Kin: Next of kin information should be gathered as soon as possible to ensure that condolence letters can be sent in a timely manner.

G. Inspection Documents: At the discretion of the Division Chief, an incident report may be written for certain incidents. The report will be designed as a learning tool to support the mission of IL OSHA and used in outreach efforts. The format of the incident report is similar to the reports generated by the NIOSH Fatality Assessment and Control Evaluation Program. The report will be "sanitized" of actual names of places and people involved. The report may be issued with any citations (if any) or at a later date.

H. Potential Criminal Penalties in Fatality and Catastrophe Cases

1. Criminal Penalties: Section 120(a) of the Illinois Occupational Safety and Health

Act provides criminal penalties for an employer who is convicted of having willfully violated an IL OSHA standard, rule or order when the violation results in the death of an employee. The circumstances surrounding all occupationally-related fatalities will be evaluated to determine whether the fatality was caused by a willful violation of a standard, thus creating the basis for a possible criminal referral. The evidence obtained during a fatality investigation is of paramount importance and must be carefully gathered and considered. Early in the investigation, the Division Chief or designee, in consultation with the inspector, should make an initial determination as to whether there is potential for a criminal violation. The decision will be based on consideration of the following:

- A fatality has occurred.
- There is evidence that an IL OSHA standard has been violated and that the violation contributed to the death.
- There is reason to believe that the employer was aware of the requirements of the standard and knew it was in violation of the standard, or that the employer was plainly indifferent to employee safety.
- The Division Chief will notify the Legal Division. At the discretion of the Division Chief, a criminal investigator may assist in or perform portions of an investigation.
- When there is a potential criminal referral in a case, it is essential that the Division Chief involve the Legal Division in the early stages of the investigation during the evidence gathering process.

I. Families of Victims

1. Contacting Family Members: The next of kin of an employee involved in fatal incident that IL OSHA is inspecting shall be contacted by the Division Chief as soon as possible and remain as the sole family liaison. IL OSHA staff contacting family members must be empathetic, exercise tact, and practice good judgment in their discussions. See CPL 02-00-171, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, dated August 26, 2024 for more information.

2. Initial Next of Kin Letter: This letter will only be sent when opening a fatality inspection. The initial next of kin letter will be sent to within five working days of determining the victim's identity, next of kin, and address information. The letter will come from the Director of IDOL and list the Division Chief as the IL OSHA point of contact for the next of kin.
   NOTE: It may be difficult to obtain next of kin contact information from the employer. If this occurs refer the situation to the Regional Enforcement Manager.

3. Interviewing the Family: When taking a statement from families of the victim(s), explain that the interview will be handled following the same procedures as those in effect for witness interviews. Empathy, sensitivity, and professionalism are required during these interviews. Carefully evaluate the information received and attempt to corroborate it during the investigation. Maintain follow-up contact with key family members or other contact persons so that these parties can be kept up-to-date on the status of the investigation.

4. Contact with Next of Kin prior to Issuance: The Division Chief will contact the next of kin prior to the issuance of any citations, hazard alert letters or no violation letters to the employer. The Division Chief will review the inspection process, explain any findings and answer questions.

5. If desired, next of kin or their legal representatives will receive a copy of all citations, subsequent settlement agreements as these are issued, or as soon thereafter as possible. However, such information will only be provided to family members after it has been provided to the employer.

   The releasable portions of the case file will not be made available to family members until after the contest period has passed and no contest has been filed. If a contest is filed, the case file will not be made available until after the litigation is completed. Additionally, if a criminal referral is under consideration or has been made, the case file may not be released to the family. Notify the family of these policies and inform them that this is necessary so that any potential litigation is not compromised.

J. Public Information Policy: IL OSHA's public information policy regarding response to fatalities and catastrophes is to explain IL OSHA's presence to the news media. It is not to issue periodic updates on the progress of the investigation. Refer all media inquiries to the IDOL Public Information Officer through your supervisor.

K. Pre-Citation Review

1. Because cases involving a fatality may result in civil or criminal enforcement actions, the Division Chief is responsible for reviewing all fatality and catastrophe investigation case files to ensure that the case has been properly developed and documented in accordance with the procedures outlined here.

2. The Regional Enforcement Manager is responsible for ensuring that an Investigation Summary Report is entered for each incident.

3. Review all proposed violations and penalties.

4. The Division Chief should establish a procedure to ensure that each fatality or catastrophe is thoroughly investigated and processed in accordance with established policy.

L. Post-Citation Procedures/Abatement Verification: Abatement verification procedures are provided in Section 350.210 of the Administrative Rules.

1. Due to the transient nature of many of the worksites where fatalities occur and because the worksite may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. In such cases, the Regional Enforcement Manager should obtain abatement verification from the employer, along with an assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring.

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

3. Where the worksite continues to exist, IL OSHA will normally conduct a follow-up inspection if serious citations have been issued.

4. Include abatement language and safety and health system implementation language (if practical) in any subsequent settlement agreement.

5. If there is a violation that requires abatement verification, the abatement verification required portion of violation worksheet must be completed with the date of abatement verified.

M. Audit Procedures: The following procedures will be implemented to evaluate compliance with, and the effectiveness of, fatality/catastrophe investigation procedures. A review and analysis of fatality/catastrophe files will be a part of the program audit. The review and analysis will utilize random case files to address the following:

1. Inspection Findings: Ensure that hazards have been appropriately addressed and violations have been properly classified. Also ensure that criminal referrals are made when appropriate.

2. Documentation. Ensure that the Fatality Summary narrative and the Violation Narrative data fields have been completed accurately and detailed. Ensure that the IMMLANG Questionnaire is completed, if relevant.

3. Settlement Terms. Ensure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language.

4. Abatement Verification. Ensure that abatement verification has been obtained.

5. Review OIS reports to identify any trends or cases that may indicate that a further review of those cases may be necessary.

N. Relationship of Fatality and Catastrophe Investigations to Other Programs and Activities

1. Emergency Management: Generally, IL OSHA will provide technical assistance and consultation in coordinating the protection of response worker and recovery worker safety and health. Whether IL OSHA will conduct a formal fatality or catastrophe investigation in such a situation will be determined on a case-by-case basis.

2. Significant Enforcement Cases: Significant enforcement cases are defined as inspection cases with initial proposed penalties over $100,000. An inspection resulting from an employee fatality, or a workplace catastrophe may well be a significant enforcement case and, therefore, particularly thorough documentation is necessary to sustain legal sufficiency.

3. Special Emphasis Programs: If a fatality or catastrophe investigation arises with respect to an establishment that is also in the current inspection cycle to receive a programmed inspection under any Site Specific Targeting program, the investigation and the inspection may be conducted either concurrently or separately.

O. Special Issues Related to Workplace Fatalities

1. Death by Natural Causes: Workplace fatalities caused by natural causes, including heart attacks, must be reported by the employer. The REM will decide whether to assign an inspection after reviewing the circumstances.

2. Workplace Violence: As with heart attacks, fatalities caused by incidents of workplace violence must be reported to IDOL by the employer. The REM will decide whether to assign an inspection after reviewing the circumstances.

3. Motor Vehicle Accidents: IDOL **does** require reporting work-related motor vehicle incidents that occur on public roads or highways, including incidents that occur in construction work zones. The REM will decide whether to assign an inspection after reviewing the circumstances.

4. Suicides: Incidents of employee suicide in the workplace must be reported to IL OSHA by the employer. The REM will decide whether to assign an inspection after reviewing the circumstances.

10-3 Rescue Operations and Emergency Response

A. **IL OSHA Authority to Direct Rescue Operations:** IL OSHA has **no** authority to direct rescue operations. These are the responsibility of the employer and/or local political subdivisions or state agencies. IL OSHA may monitor and inspect working conditions of covered employees engaged in rescue operations to ensure compliance with standards that protect rescuers, and to provide technical assistance where appropriate. IL OSHA personnel should stay well outside the hazard zone of an incident involving active rescue operations.

B. **Voluntary Rescue Operations Performed by Employees:** IDOL recognizes that an employee may choose to place himself/herself at risk to save the life of another person. The following provides guidance on IDOL citation policy toward employers whose employees perform, or attempt to perform, rescues of individuals in life-threatening danger.

1. Imminent Danger: 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 [i.e., 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] unless:

    - Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, AND the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; OR
    - Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, AND the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; OR
    - 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 operations where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; AND such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; AND 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.

2. Citation for Voluntary Actions: If an employer has trained his or her employees, no citation will be issued for an employee's voluntary rescue actions, regardless of whether they are successful.

C. Emergency Response

1. Role in Emergency Operations: While it is IL OSHA's policy to respond as quickly as possible to significant events that may affect the health or safety of employees, IL OSHA does not have authority to direct emergency operations. An IL OSHA inspector cannot serve beyond an advisory, non-operational role during an incident. They can provide information, but they cannot direct others, take an operational role, or enter an active hazard zone.

2. Response to Catastrophic Events: IL OSHA responds to catastrophic events promptly and acts as an active and forceful protector of employee safety and health during the response, cleanup, removal, storage, and investigation phases of these incidents, while maintaining a visible but limited role during the initial response phase.

3. IL OSHA's Role:

    - For inspections of an ongoing emergency response or post-emergency response operation where there has been a catastrophic event, the Division Chief will determine the overall role that IL OSHA will play.

    - During an emergency event, IL OSHA has a responsibility and authority to both enforce its regulations and provide technical advice and assistance to the on-scene coordinator.

    - For details on IL OSHA's response to occupationally-related incidents involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or potential employee injury that generates widespread media interest. See CPL 02-00-094, IL-OSHA's Response to Significant Events of Potentially Catastrophic Consequences, dated July 22, 1991.

Chapter 11 is under review by Legal Division. Contact Legal Division for all questions.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 11: Legal Issues
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

11-1 Administrative Subpoenas

All language in this chapter is considered a procedure unless noted otherwise.

A. When to Issue and Authority

An Administrative Subpoena may be issued whenever there is a need for records, documents, testimony, or other supporting evidence necessary for completing an inspection or an investigation of any matter falling within IL OSHA's authority (820 ILCS 219/25(a).

The IL OSHA Division Chief recommends subpoenas to the Director of IDOL for approval. The Director of IDOL issues and signs subpoenas.

Authority for Administrative Subpoenas, and discovery can be found at:

(820 ILCS 219/25)
Sec. 25. Occupational safety and health standards.
(a) All federal occupational safety and health standards which the United States Secretary of Labor has promulgated or modified in accordance with the federal Occupational Safety and Health Act of 1970 and which are in effect on the effective date of this Act shall be and are hereby made rules of the Department unless the Director promulgates an alternate standard that is at least as effective in providing safe and healthful employment and places of employment as a federal standard.

B. Two Types of Subpoenas:

1. A Subpoena Duces Tecum is used to obtain documents. It orders a person or organization to appear at a specified time and place and produce certain documents, and to testify to their authenticity. Employers are not required to create a new record to respond to these types of subpoenas. Generally, if the person or organization provides the records, responses, or information requested in the Subpoena Duces Tecum they do not have to appear to testify on the date specified in the subpoena.

2. A Subpoena Ad Testificandum commands a named individual or corporation to appear at a specified time and place, such as the nearest IDOL office, to provide testimony under oath. A verbatim transcript is made of this testimony. This type

of testimony is generally called a deposition and the questioning should be done pursuant to an approved set of scripted questions to ensure that there are no omissions in evidence to be gathered during the deposition. A court reporter will need to be present to record and make a transcript of such questioning. Legal Counsel will conduct the questioning of the witness in such matters.

C. **Subpoena Preparation:** First, it is recommended that efforts to obtain evidence are made prior to issuance of a subpoena. The Regional Enforcement Manager (REM) should contact the entity via phone and/or e-mail to explain the purpose of the records request and the authority to request records under the Illinois Occupational Safety and Health Act. If the entity still refuses to respond or desires a subpoena to satisfy their policies and procedures, the REM will verify the appropriate name and address for the subpoena. If reasonable attempts fail, the assigned inspector, and the Regional Enforcement Manager (REM) will work together to draft the subpoena using the appropriate subpoena template. Where no individual's name is available the subpoena can be addressed to the organization's "Custodian of Records."

1. Subpoena language: Examples of language for a Subpoena Duces Tecum are provided below. This is not a comprehensive sample of questions, requests for information to be included in a subpoena. It is recommended that the REM provide a template for subpoenas and that assigned investigator share commonly used questions that can be tailored to the issues, potential citations and violations, and fact patterns that make up an IL OSHA investigation. This language should be expanded or tailored to meet the particular investigation when requesting additional or more detailed information for accident, catastrophe, referral, or fatality investigations. A subpoena's description should be narrow and specific in order to increase the likelihood for prompt compliance with the request.
    - "Copies of any and all documents, including information stored electronically, which reflect training procedures for the lockout/tagout procedures and hazard communication program in effect at the [insert site name}in [insert city, state], during the period [insert month/day/year], to present."

    - "Copies of the OSHA-300 and the OSHA-301 forms, for the entire site, during calendar years [insert year] and [insert year]."

    - "Copies of any and all documents, including information stored electronically, such as safety and health program handbooks, minutes of safety and health meetings, training certification records, audits and reprimands for violations of safety and health rules by employees of the [insert site name] in [insert city, state], that show [insert employer's name] had and enforced safety rules relating to the use of trench boxes during the period [insert month/day/year], to present."

D. Subpoena Service:

1. After the subpoena is signed by the Director of IDOL, or the Director's delegee, it will be notarized. The subpoena shall be scanned and placed into the appropriate electronic case file.

2. The subpoena will normally be served by certified mail with return receipt requested. After mailing, the subpoena may also be e-mailed to the party by the inspector to the appropriate party in person (personal service). Leaving a copy at a place of business or residence is not personal service.

   NOTE: In exceptional circumstances, service may be hand delivered to the person or entity being served. Leaving a copy at place of business or residence it not personal service. An Affidavit showing who was served, the time, date and place of service must be included in the record of service and attested to by the inspector.

3. The IL OSHA administrative employee shall track all subpoenas issued on the Excel tracking sheet.

E. Compliance with Subpoena Duces Tecum:

The person/entity served may comply with subpoena duces tecum by making the information or evidence available to the inspector immediately upon service, or at the time and place specified in the subpoena.

1. With respect to any record required to be made or kept pursuant to any statute or regulation, the subpoena shall normally allow three days from the date of service for production of the required information although a shorter period may be appropriate.

2. With respect to other types of records or information, such as safety programs or incident reports, the subpoena shall normally allow at least five working days from the date of service for production of the required information.

3. Separate subpoenas for items 1 and 2 above may be necessary.

F. Refusal to Honor Subpoena:

If the person/entity served refuses to comply with (or only partially honors) the subpoena, the inspector and REM shall document all relevant facts and advise the Division Chief before taking further action. To enforce a subpoena, the Division Chief shall follow the procedures outlined for obtaining warrants, and shall refer the matter to the Legal Division for appropriate action.

G. Anticipatory Subpoena:

Generally, IL OSHA policy is to seek voluntary production of evidence before an administrative subpoena is issued. However, a subpoena may be executed and served without making a prior request where there is reason to believe that the corporate entity and/or person from whom information is sought will not voluntarily comply, or where there is an urgent need for the information. Anticipatory subpoenas require consultation with the Legal Division.

NOTE: For example, pre-inspection preparation of subpoenas for issuance at the opening conference is appropriate in cases where the employer has previously denied access to records or where complex inspections, involving extensive review of records, are planned.

11-2 Service of Subpoenas on IL OSHA Personnel

A. Proceedings to which the Director of IDOL is a Party:

If any IL OSHA personnel are served with a subpoena or order either to appear or to provide testimony in, or information for, a proceeding where the Director of Labor is a party, they shall immediately contact the Legal Division for instructions regarding the way to respond. If an inspector is served with a subpoena, they shall notify the Division Chief immediately who shall then refer the matter to the Legal Division.

The Legal Division will contact the Attorney General's Office and make request for representation. Prior to appearing for a deposition, the witness identified in the subpoena should meet with the assigned Assistant Attorney General and staff from the Legal Division to prepare for the deposition. On the date and time of the deposition, the witness in the subpoena shall appear with the assigned Assistant Attorney General during the deposition. Employees of IL OSHA will not participate in depositions, or provide evidence at hearing, trial or other forum without legal representation.

B. Proceedings to which the Director of IDOL is not a Party:

1. If any IL OSHA personnel are served with a subpoena or order either to appear or to provide testimony in, or information for, a proceeding to which the Director of IDOL is not a party (e.g., a private third party tort suit for damages associated with a workplace injury), they shall immediately contact the Legal Division.

2. The Illinois Department of Labor prohibits Department employees from participating in, or from providing information for, proceedings in which the Director of Labor is not a party without explicit permission from the designated Chief Legal Counsel. These regulations apply to demands to disclose or provide:

    - Any material contained in the files of the Department;

- Any information relating to material contained in the files of the Department; or

- Any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his/her official duties or because of his/her official status.

3. The Legal Division is responsible for responding to such requests and will take appropriate steps to have the subpoena quashed or provide the necessary permission, as appropriate, to allow an employee to comply with an issued order.

11-3 Obtaining Warrants

A. Warrant Applications: Upon refusal of entry, of if there is reason to believe an employer will refuse entry, the Division Chief shall proceed according to guidelines and procedures for warrant applications. The Division Chief may initiate the compulsory process with approval of the Legal Division. Warrant applications for establishments where consent has been denied for a limited scope inspection (i.e., complaint, referral, accident investigation) shall normally be limited to the specific working conditions or practices forming the basis of the inspection. However, a broad scope warrant may be sought if there is evidence of potentially pervasive violative conditions or if the establishment is on a current list of establishments targeted for a comprehensive inspection.

B. General Information Necessary to Obtain a Warrant: If the warrant is to be obtained by the Legal Division, the Division Chief shall inform the Legal Division in writing within 48 hours after the determination is made and provide all information necessary to obtain a warrant, including:

1. IDOL Office, telephone number, and name of Regional Enforcement Manager or designee involved;

2. Name of inspector attempting inspection and inspection number, if assigned. Identify the method for triggering or initiating the inspection in accordance with the FOM. Identify whether the inspection to be conducted will include safety items, health items or both;

3. Legal name(s) of establishment and address, including City, State and County. Include site location if different from mailing address;

4. Estimated number of employees at inspection site;

5. Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) Code and high hazard ranking for that specific industry within the State;

6. Summary of all facts leading to the refusal of entry or limitation of inspection, including:

    - Date and time of entry/attempted entry;
    - Date and time of denial;
    - Stage of denial (entry, opening conference, walk-around, etc.);

7. A narrative of all actions taken by the inspector leading up to, during, and after refusal, including:

    - Full name and title of the person(s) to whom inspector presented credentials;
    - Full name and title of person(s) who refused entry;
    - Reasons stated for the denial by person(s) refusing entry;
    - Response, if any, by the inspector to the denial name and address (if known) of any witnesses to denial of entry.

8. Any information related to past inspections, including copies of previous citations.

9. Any previous requests for warrants. Attach details, if applicable.

10. All completed information related to the current inspection report, including documentation of any observations of violations in plain view discovered prior to denial.

11. If a construction site involving work under contract from any agency of the Illinois Government, the name of the agency, the date of the contract, and the type of work involved.

12. Other pertinent information, such as: description of the workplace; the work processes; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.

13. Investigative procedures that may be required during the proposed inspection, e.g., interviewing of employees/witnesses, personal sampling, photographs, audio/videotapes, examination of records, access to medical records, etc.

C. Specific Warrant Information Based on Inspection Type

1. Imminent Danger:

- Description of alleged imminent danger situation;
- Date information received and source of information;
- Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger; and
- Whether all current imminent danger investigative procedures have been followed.

2. Fatality/Catastrophe: The Fatality/Catastrophe Report Form should be completed with as much detail as possible.

3. Complaint or Referral:

    - Original complaint or referral and copy of typed complaint or referral;
    - Reasons IL OSHA believes that a violation threatening physical harm or imminent danger exists, including possible standards that could be violated if the complaint or referral is credible and representative of workplace conditions;
    - Whether all current complaint or referral processing procedures have been followed; and
    - Any additional information pertaining to the evaluation of the complaint or referral.

4. Programmed:

    - Targeted safety – general industry, construction;
    - Targeted health; and/or
    - Special emphasis program--Special Programs, Local Emphasis Program, etc.

5. Follow-up:

    - Date of initial inspection;
    - Details and reasons follow-up was conducted;
    - Copies of previous citations which served as the basis for initiating the

follow-up;

- Copies of settlement agreements and final orders, if applicable; and/or
- Previous history of failure to correct, if any.

6. Monitoring:

    - Date of original inspection;
    - Details and reasons monitoring inspection is to be conducted;
    - Copies of previous citations and/or settlement agreements that serve as the basis for the monitoring inspection; and/or
    - Petition for Modification of Abatement Date (PMA) request, if applicable.

D. Warrant Procedures: Where a warrant has been obtained, inspectors are authorized to conduct the inspection in accordance with the terms of the warrant. All questions from employers concerning the reasonableness of a compulsory process inspection shall be referred to the Division Chief and the Legal Division.

1. Action Taken Upon Receipt of Warrant (Compulsory Process)

    - The inspection will normally begin within 24 hours of receipt of a warrant or from the date authorized by the warrant for initiating the inspection.
    - Upon completion of the inspection, if the warrant includes a return of service space for entering inspection dates, inspectors shall complete the return of service on the original warrant, sign and forward it to the Division Manager or designee for appropriate action.

2. Serving a Subpoena for Production of Records: Where appropriate, even where the scope of an inspection is limited by a warrant or an employer's consent to specific conditions or practices, any subpoena for production of records shall be served in accordance with the section on administrative subpoenas in this chapter.

E. Second Warrant: Under certain circumstances, a second warrant may be sought to expand an inspection based on a records review or "plain view" observations of other potential violations discovered during a limited scope walk-around.

F. Refused Entry or Interference: When an apparent refusal to permit entry or inspection is encountered upon presenting the warrant, inspectors shall specifically inquire whether the employer is refusing to comply with the warrant. If the employer refuses to comply or if consent is not clearly given, inspectors shall not attempt to conduct the inspection at that time, and shall leave the premises and contact the Division Chief or designee

regarding further action. Inspectors shall fully document all facts relevant to the refusal (including noting all witnesses to the denial of entry or interference). The Division Chief shall then contact the Legal Division, who shall jointly decide the action to be taken.

G. **Illinois State Police Assistance:** In unusual circumstances, the Illinois State Police may be asked to accompany an inspector when a warrant is presented. A request for law enforcement assistance shall be made by Division Chief, and only when there is a potential for violence, harassment and/or interference with the inspection or reason to believe that the presence of law enforcement will assist with compliance with the warrant.

11-4 Notice of Contest

The Administrative Law Judge from the Hearings Division of the Illinois Department of Labor belongs to an independent Division created to decide contests of citations or penalties resulting from IL OSHA inspections. The ALJ, therefore, functions as an administrative court, with established procedures for conducting hearings, receiving evidence and rendering decisions. The Act(s) and the Administrative Hearings Rules state that the ALJ's operate independently to ensure that parties receive impartial hearings.

If a matter is contested by a party, the Legal Division will represent IL OSHA before the administrative tribunal. The Legal Division's representation will ensure that there is no ex parte communication between the Hearings Division and IL OSHA staff during the pendency of the administrative hearing process.

A. **Time Limit for Filing a Notice of Contest:** The Illinois Occupational Safety and Health Act provides employers fifteen working days following its receipt of a notice of a citation to notify IDOL of the employer's desire to contest a citation and/or proposed assessment of penalty. Where a notice of contest was not mailed, i.e., postmarked, within the 15 working day period allowed for contest, the Regional Enforcement Manager shall follow the instructions for Late Notices of Contest. A copy of any untimely notice of contest shall be retained in the case file.

B. **Contest of Abatement Period Only:** If the notice of contest is submitted to the Division Chief after the 15 working day period, but contests only the reasonableness of the abatement period, it shall be treated as a Petition for Modification of Abatement and handled in accordance with PMA procedures.

C. **Communication Where the Intent to Contest is Unclear:**

1. If a written communication is received from an employer containing an objection, criticism or other adverse comment as to a citation or proposed penalty, but which does not clearly appear to contest the citations, the Regional Enforcement Manager shall contact the employer to clarify the intent of the communication.

    - After receipt, clarification should be obtained within the 15 working day

contest period so that if a determination is made that it is a notice of contest, the file may be timely forwarded to the ALJ.

- In cases where written communication from an employer requesting an informal conference that also states an intent to contest is received, the employer must be informed that there can be no informal conference unless the notice of contest is withdrawn. If the employer still wants to pursue an informal conference, it must first present or send a letter expressing that intent and rescinding the contest. All documents pertaining to such communications shall be retained in the case file.

2. If the Regional Enforcement Manager determines that the employer intends the document to be a notice of contest, it shall be transmitted to the Chief ALJ. If contact with the employer reveals a desire for an informal conference, the employer shall be informed that the conference does not stay the running of the 15 working day contest period.

   NOTE: Settlement is permitted at any stage of Administrative Hearings proceedings.

11-5 Late Notice of Contest

A. **Failure to Notify IL OSHA of Intent to Contest:** If the employer fails to notify IL OSHA of its intent to contest a citation or penalty within fifteen working days following the receipt of a citation, the citation and proposed penalties become final orders.

B. **Notice Received after the Contest Period:** In every case where IL OSHA receives notice of an employer's intent to contest a citation and/or proposed assessment of penalty beyond the 15 working day period, the Division Chief shall inform employers in writing that IL OSHA will not accept the untimely notice of contest, but that the employer may transmit the late filed notice of contest to the Chief ALJ. The letter from the Division Chief to the employer will also indicate the following:

   - Inspection number;
   - Citation number(s);
   - Corresponding proposed penalties;
   - Date on which IL OSHA believes the employer received the notice of a violation (and proposed penalty, if applicable);
   - Date on which IL OSHA received the employer's notice of contest, as well as any additional information the Division Chief believes to be pertinent.

   If there is a mailed copy of the Notice of Contest, the postmarked envelope

containing the late filed notice of contest date is to be retained. A copy of the letter and envelope shall also be sent to the Legal Division and Chief ALJ.

C. **Retention of Documents:** All documents reflecting the date on which the employer received the notice of a violation (and proposed penalty, if applicable), and the employer's notice of contest was received, as well as any additional information pertinent to demonstrating failure to file a timely notice of contest are to be maintained in the case file. Written or oral statements from the employer or its representative explaining the employer's reason for missing the filing deadline shall also be maintained (notes shall be taken to memorialize oral communications).

11-6 Contested Case Processing Procedures

The notice of contest and related documents must be sent to the Chief ALJ within 15 working days of receipt of the employer's notification. The Legal Division shall be consulted in any questionable cases.

A. Transmittal of Notice of Contest to Hearings Division

1. The envelope sent to the Chief ALJ shall contain the employer's original letter contesting IL-OSHA's action and one copy of the Citation and Notification of Penalty Form or of the Notice of Failure to Abate Form.

2. The original notice of contest shall be transmitted to the Chief ALJ and a copy retained in the case file. The envelope containing the notice of contest shall be retained in the case file with the postmark intact.

3. The Legal Division can either transmit information to the Hearings Division or be copied in the communication from IL OSHA staff with the appropriate documentation.

11-7 Communications while Proceedings are Pending before the Administrative Law Judge.

A. **Consultation with Legal Division:** After a notice of contest is filed and the case is within the jurisdiction of the ALJ, there shall be no subsequent investigations of, or conferences with, the employer or employee representatives that have sought party status relating to any issues underlying the contested citations, without prior clearance from the Legal Division. Once a notice of contest has been filed, all inquiries relating to the Citation and Notification of Penalty shall be referred promptly to the Legal Division. This includes inquiries from the employer, affected employees, employee representatives, prospective witnesses, insurance carriers, other Government agencies, attorneys, and any other party.

B. **Communications with the Administrative Law Judge while Proceedings are Pending:** Inspectors, Regional Enforcement Managers, the Division Chief, or other field

personnel shall not have any direct or indirect communication relevant to the merits of any open case with Administrative Law Judges or any of the parties or interveners. All inquiries and communications with the parties or interveners shall be handled through consultation with the Legal Division.

11-8 Discovery Methods in Accordance with the Administrative Hearings Rules

Once a legal proceeding has been initiated, each party can exchange, disclose or "discover" evidence in the possession of an opposing party (See 820 ILCS 219/25). Traditionally, discovery methods include:

- Request for Admissions
- Interrogatories
- Requests for Production of Documents
- Depositions

An attorney from the Legal Division will represent the agency in responding to discovery requests. It is essential that all IDOL personnel coordinate and cooperate with the assigned attorney to ensure that such responses are accurate, complete, and filed in a timely manner.

A. **Interrogatories:** Inspectors shall draft and sign answers to interrogatories, with the Legal Division assistance. It is the responsibility of the inspector to answer each interrogatory separately and fully. The Legal Division attorney shall sign any objections to the interrogatories. Inspectors should be aware that they may be deposed and/or examined at hearing on the interrogatory answers provided.

B. **Production of Documents:** If a request for production of documents is served on the Legal Division and that request is forwarded to the Division Chief, inspectors, or staff members, they should immediately make all documents relevant to that discovery demand available to the Legal Division attorney. While portions of those materials may be later withheld based on governmental privileges or doctrine (e.g., statements that would reveal the identity of a complainant), inspectors must not withhold any information from the Legal Division attorney. It is Legal Division's responsibility to review all material and to assert any applicable privileges that may justify withholding documents/materials that would otherwise be discoverable.

C. **Depositions:** Depositions permit an opposing party to take a potential witness' pre-hearing statement under oath in order to better understand the witness's potential testimony if the matter later proceeds to a hearing. Inspectors or other IDOL personnel may be required to offer testimony during a deposition. In such cases, a Legal Division attorney will be present with the witness.

11-9 Testifying in Hearings

While instructions provided by Legal Division attorneys take precedence, particularly during

trial preparation, the following considerations will generally enhance the hearing testimony of inspectors:

A. **Review Documents and Evidence:** In consultation with the Legal Division, inspectors shall review documents and evidence relevant to the inspection or investigation before the proceeding so that when testifying, they are very familiar with the evidence and need not regularly refer to the file or other documents.

B. **Attire:** Wear appropriate clothing that reflects the agency's respect for the court or other tribunal before which you are testifying. This also applies when appearing to seek an administrative warrant.

C. **Responses to Questions:** Answer all questions directly and honestly. If you do not understand a question, indicate that and ask that the question be repeated or clarified.

D. **Administrative Law Judge's Instruction(s):** Listen carefully to any instruction provided by the ALJ and, unless instructed to the contrary by Legal Division counsel, follow the ALJ's instruction.

11-10 Citation Final Order Dates

A. **Citation/Notice of Penalty Not Contested:** The Citation/Notice of Penalty and abatement date becomes a final order on the date the 15 working day contest period expires. For purposes of computing the 15 working day period, the day the employer receives the citation is not counted.

   Example 15-1: An employer receives the Citation/Notice of Penalty on Monday, August 4th. The day the employer receives the Citation/Notice of Penalty is not counted. Therefore, the final order date would be Monday, August 25th.

B. **Citation/Notice of Penalty Resolved by Informal Settlement Agreement:** Because there is no contest of the citation, an ISA becomes final, with penalties due and payable, on the date of the last signature of the parties. (An ISA is effective upon signature by both the Division Manager and the employer representative as long as the contest period has not expired).

   NOTE: A later due date for payment of penalties may be set by the terms of the ISA.

C. **Citation/Notice of Penalty Resolved by Formal Settlement Agreement:** The Citation/Notice of Penalty becomes final 30 days after docketing of the Administrative Law Judge's (ALJ's) Order approving the parties' stipulation and settlement agreement, assuming there is no direction for review. The Notice of Docketing specifies the date upon which the decision becomes a final order.

11-11 Communicating With Employer's Legal Counsel During Inspection Process

A. Most communication between IL OSHA and employers during an inspection or

investigation is between the assigned inspector and elected and/or appointed officials such as mayors, department heads, chiefs, risk managers, etc. Occasionally inspectors will be contacted by the employer's legal counsel. Inspectors contacted by legal counsel should contact their Regional Enforcement Manager for guidance. All communications between an inspector and an employer's legal counsel shall be in an e-mail format and carbon copied to their REM. Inspectors are discouraged from phone communications with an employer's legal counsel. The Regional Enforcement Manager may decide to handle communications with an employer's legal counsel or seek further guidance from the Division Chief and Legal Division.

Inspectors may choose to defer communications from an employer's legal counsel at any time to their Regional Enforcement Manager.

IDOL-Division of Occupational Safety and Health
Field Operations Manual

Chapter 12: Freedom of Information Act
Effective Date: 1 December 2020
Revised: 1 October 2023 **Signed:**

12-1 Procedure

A. **IDOL FOIA Officer:** All FOIA requests received will be forwarded to the IDOL FOIA Officer.

B. **Request Received:** Date stamp request as the day after it is received. FOIA requests are due five working days from date stamp. Note the due date on the request with your initials.

C. **Input FOIA request:** Input into IL OSHA FOIA Log. Save Log.

D. **Notification:** Notify division or divisions of request via e-mail.

E. **Division Response:** Division must treat as priority and search for matching records. Division must advise based on the following categories:

Identify if there were no responsive records **.**

1. Identify whether investigation is open or closed.

   - Open records are not disclosed

   - Closed investigations are disclosed**.** Per Governor's office, closed investigations include those cases closed by IDOL but pending at Attorney General's office for legal work.

2. Count the number of pages that are responsive to the request and advise via e-mail the number of pages.

   - The first 50 pages are free. Any requests with over 50 pages are charged at $.15 per page. If free, the division shall copy and begin processing If the request is over 50 pages, request is made from requestor for payment of fees prior to copying. Upon receipt of payment, copying and processing begins.

F. **Large Requests:** If there are a large amount of records that are responsive to a request IL OSHA must contact the FOIA Officer or FOIA Liaison who will contact the requestor within five (5) business days via telephone and followed by written communication (e-mail is best) to narrow the request to manageable proportions. Failure to do so waives the

Department's right to assert that a request is unduly burdensome. The FOIA Liaison will work to narrow the request, and inform the requestor in writing. If requestor refuses to narrow, the FOIA Officer may deny request as unduly burdensome. A "large" number of records will change depending upon which division is responding to the FOIA, as well as how "form-like" the documents are within that Division.

G. **Redacting:** If responsive documents contain personal or confidential information, the following information may be "redacted" or blacked out. The current FOIA procedure requires that IL OSHA provide both the original documents and "proposed redactions" that will put a red box around the proposed redactions for the FOIA Officer to review:

1. Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses, home address and personal license plates.

2. ANY OTHER INFORMATION YOU BELIEVE IS AN UNWARRANTED INVASION OF PRIVACY, SUCH AS PERSONNEL RECORDS, BANK ACCOUNT NUMBERS, MARITAL STATUS, BIRTH DATE, please advise the FOIA Liaison, the Legal Department who will assist with advice as to performing this task.

3. If responsive documents contain preliminary notes or drafts (ALJ notes, investigator notes, etc.) contact the Legal Department as to performing this task. These items should be marked in the "proposed redactions" by putting a red box around the materials that you believe should not be tendered to the requestor per an applicable exemption under FOIA.

4. If you believe another law prohibits IL OSHA from releasing documents, such as medical records, they may also be removed automatically.

H. **Documentation:** Upon release of documents, update FOIA Log. If redactions are made, they must be noted on FOIA log by specific sub-section of the law. FOIA mandates this be tracked. Save changes.

ILLINOIS OSHA NOTICE

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

SPECIAL ORDER NUMBER: N/A	EFFECTIVE DATE: N/A
SUBJECT: N/A	

Purpose: Placeholder for future special order if necessary.

Scope: IL OSHA-wide.

Reference: N/A

Cancellations: N/A

Expiration Date: This will remain in effect until superseded or rescinded.

N/A

ILLINOIS OSHA NOTICE

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

SPECIAL ORDER NUMBER: 24-1R	EFFECTIVE DATE: 5-9-2024
SUBJECT: Limitations under the Appropriations Act Rider	

Purpose: Provide enforcement team members with guidance on the federal appropriations rider policy.

Scope: IL OSHA-wide.

Reference: CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act

Cancellations: Special Order 24-1

Expiration Date: This will remain in effect until superseded or rescinded.

If, in the future, IL OSHA operates as a full state plan with private sector jurisdiction, the plan will restrict private sector inspection activity per the appropriations rider in effect.

ILLINOIS OSHA NOTICE

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

SPECIAL ORDER NUMBER: 23-2	EFFECTIVE DATE: 8/24/2023
SUBJECT: Performing Outdoor Heat Inspections	

Purpose: Provide IL OSHA team with guidance on performing inspections related to outdoor heat hazards.

Scope: IL OSHA-wide.

Reference: IL-FOM, IL OSHA Heat Inspections Toolkit folder

Cancellations: N/A

Expiration Date: This will remain in effect until superseded or rescinded.

Introduction: To ensure state and local government workers in Illinois receive reasonable protection from hazards associated with working outdoors during periods of high heat, IL OSHA may conduct partial-scope inspections at outdoor worksites when the heat index meets or exceeds 80°F.

Type of inspection: Classified as a referral (FOM 9-1 A 9) which is best described as a self-referral by an IL OSHA inspector directly observing a condition.

Scope of inspection: Partial.

Criteria to conduct an outdoor heat inspection:

1. Utilize the "OSHA-NIOSH" Heat Safety Tool App (available through "Apps At Work" on state iPhone) to find the current heat index for the area. The app indicates three hazard levels: CAUTION less than 80°F heat index, WARNING 80°F to 94°F heat index, and DANGER at 95°F heat index or higher. If the app indicates current area conditions are in the WARNING or DANGER level, move to step 2.

2. Ensure the worksite is outdoors and workers are state or local government employees under IL OSHA jurisdiction. It may be best to drive by and make an initial assessment. IL OSHA focus for these inspections should be on public works, street, highway, water, and sewer departments, but workers from other departments or agencies could be exposed to high heat conditions as well.

3. Contact your REM to discuss your initial observations and request to open a self-referral outdoor heat inspection. If you cannot contact your REM, you may proceed with the understanding that your REM may treat this as an informal inquiry (UPA) and not classify it as an inspection if appropriate.

4. Prior to entering the worksite, ensure your own health and safety. Use the vehicle amber light if necessary, wear a high visibility vest, and wear additional PPE as necessary. Ensure you are properly hydrated.

5. Conduct the inspection with a focus on high heat hazards. Under most circumstances you will not expand the scope of the inspection and your authority to expand the scope of the inspection is limited. Please consult your REM for further guidance.

6. Ensure you utilize the "IL OSHA Heat Inspection Field Notes," you obtain an employee interview, and obtain contact information for the employer's injury and illness logs.

7. Ensure you handout at least one copy of the "Worksite handout heat hazard alert" to an employee and employer representative.

Example of OSHA-NIOSH app indicating dangerous heat index.

ILLINOIS OSHA NOTICE

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

SPECIAL ORDER NUMBER: 23-3	EFFECTIVE DATE: 10-1-2023
SUBJECT: Supplemental Enforcement Guidance – Hearing Conservation	

Purpose: Provide enforcement team members with guidance on inspections that may involve noise and/or hearing conservation

Scope: IL OSHA-wide.

Reference: 29 CFR 1910.95, 29 CFR 1910.132

Cancellations: N/A

Expiration Date: This will remain in effect until superseded or rescinded. This supersedes 21-1.

According to 1910.95(a), "Protection against the effects of noise exposure shall be provided when the sound levels exceed those shown in Table G-16 when measured on the A scale of a standard sound level meter at slow response. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with appendix A and Table G-16a, and without regard to any attenuation provided by the use of personal protective equipment" (1910.95(c)(1)). In short, there are calculations involved based on data obtained by monitoring and measuring employee exposures. It's also important to note that these calculations do not factor in PPE.

The only way to get this data is to perform noise monitoring based on a protocol that accounts for common employee exposures. In places where workers tend to work in one room or location, then area monitoring is usually sufficient. However, for jobs where employees move frequently and are exposed to greater variations in noise, then representative personal sampling may be necessary.

Protocols and calculations are best left to industrial hygienists, and monitoring should be conducted by personnel experienced with industrial hygiene sampling and data collection. Inaccurate or misrepresented data risks employees' safety and exposes the employer to citations from IL OSHA.

Accurate data will determine if employee noise exposures are at levels that require a hearing conservation program. Monitoring is the only way to know for certain.

What is a Hearing Conservation Program (HSP)?

The basic elements of an effective hearing conservation program include:

- **Initial Noise Monitoring**. Initial monitoring identifies noise sources and the employees who are exposed at or above 85 dB(A), time-weighted average (TWA).
- **Engineering and Administrative Controls**. Engineering controls are the desired method to reduce the noise coming off the source(s) to acceptable levels. Engineering controls can involve substantial start-up costs, or unavailable technology. In these and other cases, engineering controls may not be deemed feasible. Administrative controls, such as job rotation and work practices, can be used to reduce the duration of exposure to noise to keep daily noise exposures below 85 dBA. Administrative controls present other feasibility problems that may prevent their implementation.
- **Audiometric Testing program**. Audiometric testing is used to establish baselines and monitor the hearing ability of overexposed employees.
- **Hearing Protection Devices (HPDs)**. Ear plugs, earmuffs, and other hearing protectors are used to attenuate the noise reaching the employee's ears.
- **Employee Training**. A training program is needed to encourage the wearing and proper use and care of HPDs.
- **Recordkeeping**. Exposure monitoring, audiometric testing, and training records need to be maintained.
- **Periodic Noise Monitoring**. To ensure proper identification of overexposed employees following significant changes in equipment, operations, processes, or machinery that will affect the exposed group, periodic monitoring is needed.

How are Occupational Noise Exposures Screened by Public Safety Inspectors (PSI)?

1. Noise exposures can be determined by the PSI using the NIOSH Sound Level Meter (SLM) app on their state issued cell phone available through "Apps@Work." Ensure the app settings are: Standard OSHA, Time weighting Slow, and Frequency weighting A.

2. If the PSI encounters a high noise area during the inspection, they should screen the work area using the SLM to determine if the area exceeds 85 dBA. If the SLM registers above 85 dBA:

   a. Photograph the work area and record readings taken in the hearing zone (two-foot diameter sphere around head of an employee).

   b. Note the time workers spend in each area and if the noise level is continuous or intermittent. Determine how long each employee is exposed to each noise level if possible.

   d. Ask employees to assess typical daily noise exposures compared to the observed exposure.

   e. The PSI will discuss the results with their enforcement manager and the REM will decide whether to refer the condition(s) to an industrial hygienist for noise monitoring under a separate health inspection.

Citations of 1910.95

For a citation to be issued, the standard cited must apply. It is also IL OSHA's burden to show that the standard was violated. As a result, to cite from 1910.95, IL OSHA must conduct noise

measurements to support 1910.95 violations unless the employer has already performed noise measurements.

While IL OSHA may not be able to enforce provisions of 1910.95 when noise exposures are below the threshold previously described, employers are still required to assess the workplace to determine if hazards are present, select appropriate personal protective equipment (PPE), and have affected employees use PPE, including hearing protection. Even if 1910.95 does not apply to the workplace/worksite inspected because the threshold hat not been met, other violations may be applicable that are related to the noise environment.

ILLINOIS OSHA NOTICE

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

SPECIAL ORDER NUMBER: 20-2	EFFECTIVE DATE: 12-1-2020 REVISED: 10-1-2025
SUBJECT: Site Specific Targeting 2020 (SST-20)	

Purpose: This notice implements Illinois OSHA's Site-Specific Targeting (SST) inspection plan, identified as the "SPPIL" (State Program Planned Inspection List).

Scope: Illinois OSHA-wide.

Reference: Illinois OSHA Field Operations Manual (IL FOM), December 1, 2020; OSHA Instruction CSP 01-00-005, *State Plan Policies and Procedures Manual*, May 6, 2020; and OSHA Rule *Improve Tracking of Workplace Injuries and Illnesses*, January 25, 2019.

Cancellations: Illinois OSHA Notice 14-01 (CPL 02), *Site-Specific Targeting 2014* (SST-14), 2016.

Expiration Date: This notice will terminate on September 30, 2026, unless replaced earlier by a new Notice. Upon the expiration or replacement of this Notice, inspection lists already underway must be completed.

Contact: Illinois OSHA Division
524 S 2nd Street, Suite 400
Springfield, IL 62701
217-782-9386

Background

Illinois OSHA's Programmed Planned Inspection (PPI) Program

The State of Illinois has more units of government than any other state. The state and local government constituency covered under the Illinois Occupational Safety and Health Act includes approximately 8,529[1] public entities with an estimated 758,967[2] public employees in Illinois.

Enforcement inspectors could not possibly inspect every state and local government unit every year and certainly could not inspect every establishment under Illinois OSHA jurisdiction. Therefore, Illinois OSHA has developed a Site-Specific Targeting (SST) plan to direct enforcement resources on four state and local government operations. These operations: 1) incur a high percentage of reportable incidents, and 2) perform activities that can be regulated through standards adopted by and rules promulgated under the Illinois Occupational Safety and Health Act.

Illinois OSHA's Site-Specific Targeting (SST) plan has been developed for Illinois OSHA's main Programmed Planned Inspection (PPI) program for state and local government establishments. Illinois OSHA uses a high hazard inspection targeting system based on reportable incident data collected by Illinois OSHA during federal fiscal year 2015-2019. The OSHA Information System (OIS) provides this data through the "State Accident (FAT/CAT) Log" report. Periodic tracking and analysis of this data will help Illinois OSHA achieve its goal of reducing the number of injuries and illnesses that occur at state and local government establishments by directing enforcement resources to inspect where the most serious injuries are likely to occur.

Creating the SST Inspection List

The "State Accident (FAT/CAT) Log" report was generated in OIS for RID 0551701 and 0551702 for the period of 10-1-14 through 9-30-19 (FY15-FY19). This report lists the establishment and associated details for any occupational injury classified as a reportable injury to Illinois OSHA. 56 Illinois Administrative Code Part 350 Section 410 provides reportable incident criteria:

"a) Basic Requirement
Within 8 hours after the death of any employee from a work-related incident, the employer shall orally report the fatality by telephone 24/7 Notification – (800) 782-7860 or (217) 782-7860. Within 24 hours after the in-patient hospitalization of one or more employees, or an employee's amputation, or an employee's loss of an eye, as a result of a work-related incident, the employer shall report the in-patient hospitalization, amputation or loss of an eye."

844 reportable incidents (Figure 1) occurred during federal fiscal year 2015-2019. Almost 40% of all reportable incidents occurred within one of the four targeted operations. These four targeted operations will receive Illinois OSHA's attention through comprehensive, programmed planned inspections of establishments that perform these operations:

- **Local Fire Protection (NAICS 922160)**
  Over 26% (223) of reportable incidents were from municipal fire departments or fire districts. Five of the reportable incidents resulted in a fatality. The National Fire Department Registry maintained by the U.S. Fire Administration lists 1,081 fire departments/districts in Illinois

[1] As reported by the Illinois Office of the Comptroller, April 2018.
[2] U.S. Census Bureau 2018 Annual Survey of Public Employment & Payroll.

with approximately 40,500 active firefighters. A review of data from the National Fire Incident Reporting System shows Illinois has a higher rate of injuries per firefighter than any other OSHA state-plan state.

Reference: USFA, NFIRS Firefighter Casualty Module for Illinois, calendar year 2015-2018, injuries coded as severity code 2 (first aid) through code 7 (death).

- **County/Local Road (e.g. highway, street, alley) Maintenance and Construction (NAICS 237310)**
  Over 7% (62) of reportable incidents were from county or municipal road maintenance departments. Seven of the reportable incidents resulted in a fatality.

- **Water Supply and Distribution (NAICS 221310) & Sewage Treatment (e.g. wastewater, sewer) (NAICS 221320)**
  6% (51) of reportable incidents were from municipal or district water supply or wastewater treatment operations. Two of the reportable incidents resulted in a fatality.

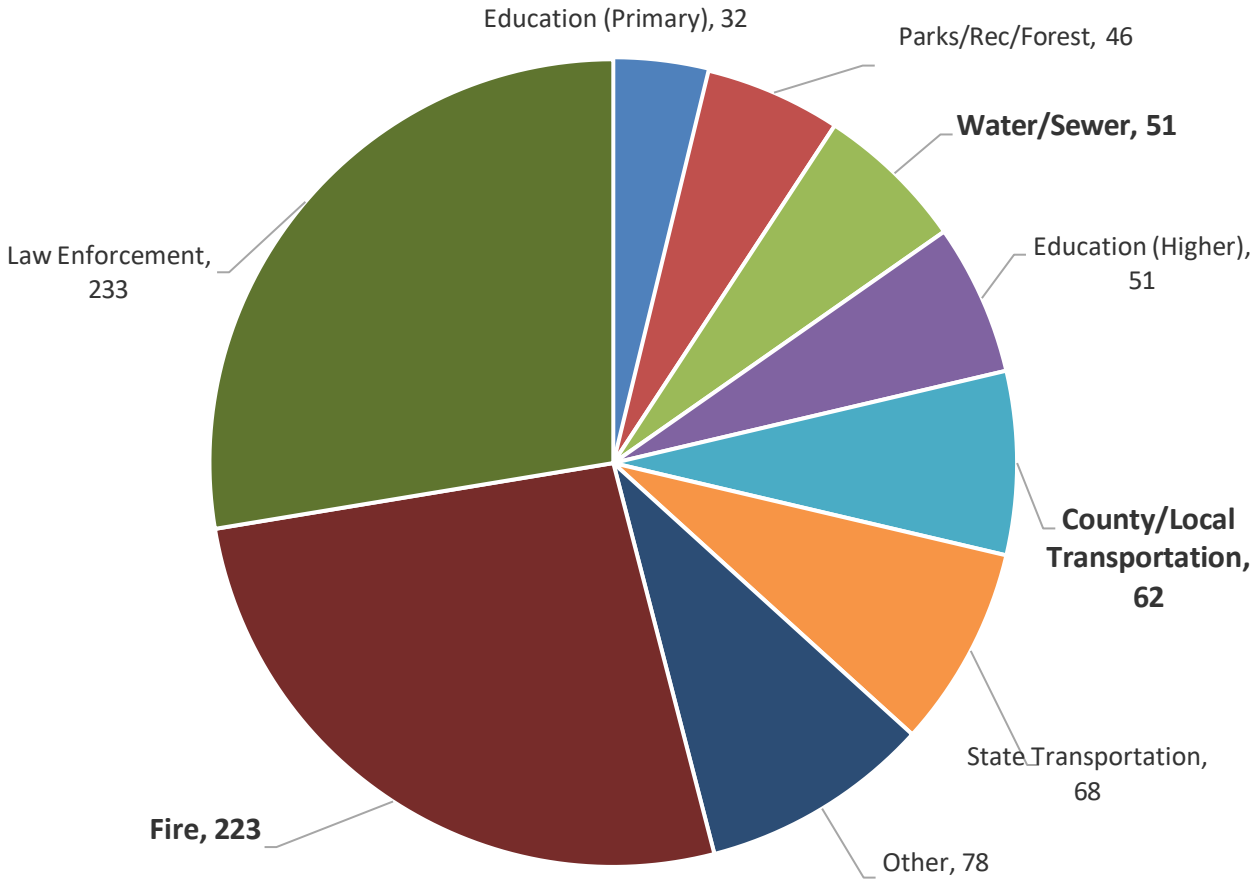

Figure 1 Reportable injury incidents by sector, federal FY15-FY19

Definitions

Comprehensive Inspection
A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection may be deemed comprehensive even though, as a result of the exercise of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected. All programmed planned inspections will be comprehensive in scope.

Establishment
56 Illinois Administrative Code Part 350 Section 250 provides the definition of an establishment as:

"c) Establishment − a single physical location where business is conducted or where services or industrial operations are performed. For activities in which employees do not work at a single physical location, such as construction, transportation, and electric, gas and sanitary services, and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise those activities or are the base from which personnel carry out those activities."

North American Industry Classification System (NAICS) Codes
The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Selection of Target Areas

Illinois OSHA has created three establishment master lists for programmed planned inspections:

- Fire Departments/Districts
- County/Local Road Maintenance and Construction
- Water/Sewer Operations

Each master list contains every identified state and local government establishment within the targeted operation. The lists were compiled from a variety of resources and databases. Each list also assigns the establishments into four categories based on a reference date of 10-1-20:

- No record of comprehensive inspection
- Comprehensive inspection performed since 10-1-17
- Comprehensive inspection performed 3-5 years ago
- Comprehensive inspection performed over 6 years ago

Scheduling and Assignment

Prior to October 1st of each year, establishments will be randomly drawn from Illinois OSHA's three targeted establishment master lists using the "RANDBETWEEN" function in Microsoft Excel. Until exhausted, establishments will be selected from the "no record of comprehensive inspection" sheet. The Division Manager will provide each Regional Enforcement Manager (REM) a programmed planned inspection list for their respective region (Figure 2) for the full federal fiscal year. Each regional list will have an approximate distribution of 50% fire department/district inspections, 25%

county/local road maintenance and construction inspections, and 25% water/sewer operations inspections.

Each Regional Enforcement Manager will then divide their lists and assign inspections to enforcement team members (public safety inspectors and industrial services hygienists).

Regional Enforcement Managers will be responsible for providing inspectors with the most accurate PPI list possible. Each assigned inspection must be verified for inspection history, appropriate jurisdiction (private/public), and operations matched to the associated NAICS code.

Example: The PPI list provided to the REM has a water entity, Mahomet Valley Water Authority, that is not clearly public or private. The REM must investigate the entity and attempt to determine appropriate jurisdiction.

Example: The PPI list provided to the REM has a water entity, Village of Tremont Water. A search of the Village of Tremont website shows that the Village only does billing and receives water from a water district. The REM would delete this entity from the PPI list and replace with another entity.

If the REM receives an entity that just includes water or sewer (e.g. Village of Maryville Water Department) the REM will also look to add an inspection to the PPI list for Village of Maryville Sewer/Wastewater Department if a search finds that the Village 1) has a sewer/wastewater department, 2) it is public sector, and 3) it has not had a comprehensive safety inspection within three years. The REM can also add a sewer/wastewater inspection if that municipality is served by a district or other public sector provider and that provider has not had a comprehensive safety inspection within three years.

For fire departments/districts, the Regional Enforcement Manager will note category 2 departments on inspector's PPI lists (see section on Establishment Determinations).

Enforcement team members will conduct assigned programmed planned inspections in accordance with the IL-OSHA Field Operations Manual.

Maintaining Inspection Lists and Documentation

Illinois OSHA's Division Manager, or designee, is responsible for maintaining documentation necessary to demonstrate that the PPI lists have been properly utilized in accordance with the requirements of this Notice, including adequate documentation on all deletions, deferrals or other modifications. All such inspection lists and documentation must be maintained by Illinois OSHA for a period of three years after all the inspections conducted under this SST plan are closed. See paragraph B.1.b.(1)(c).3 in CPL 02-00-025, *Scheduling System for Programmed Inspections* (January 4, 1995) for additional information.

List Size
Illinois OSHA will base determinations of list size (i.e., 5 to 50 establishments) on consideration of available resources and geographic range of the office.

Exhausting Assigned List
All of the establishments in a list must be inspected before any establishments in a new list may be inspected.

Deferrals

Illinois OSHA On-Site Consultation Visit in Progress
If an Illinois OSHA On-Site Consultation visit is in progress, it will take priority over programmed planned inspections. A consultation visit will be considered "in progress" in relation to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. If a consultation visit is already in progress it will terminate when the following kind of Illinois OSHA compliance inspection is about to take place:

- Imminent danger inspection;
- Fatality/catastrophe inspection;
- Complaint inspections; and/or
- Other critical inspections, as determined by the Illinois OSHA Division Manager and in accordance with the Illinois OSHA Field Operations Manual.

Full-Service Illinois OSHA On-Site Consultation Visits
While an establishment is undergoing a full-service consultation visit for safety **and/or** health; programmed enforcement activity may not occur until after the end of the establishment's visit "In Progress" status.

Limited Service On-Site Consultation Visits
If an establishment is undergoing a limited service consultation visit, whether focused on a particular type of work process or a hazard; programmed enforcement activity may not proceed while the consultant is at the establishment. The re-scheduled enforcement activity must be limited only to those areas that were not addressed by the scope of the consultative visit (posted List of Hazards).

Enforcement Follow-Up and Monitoring Inspections
If an enforcement follow-up or monitoring inspection is scheduled while an establishment is undergoing a consultation visit, the inspection shall not be deferred; however, its scope shall be limited only to those areas required to be covered by the follow-up or monitoring inspection. In such instances, the consultant must halt the consultation visit until the enforcement inspection is

completed. In the event Illinois OSHA issues a citation(s) as a result of the follow-up or monitoring inspection, a consultation visit may not proceed until the citation(s) becomes final.

Illinois OSHA On-Site Consultation and 90-Day Deferral
If an establishment has requested an initial full-service comprehensive consultation visit for safety and health from the Illinois OSHA On-Site Consultation Program, and that visit has been scheduled, the PPI may be deferred for 90 calendar days from the date of the notification by the Illinois OSHA On-Site Consultation Program to the Illinois OSHA Division Manager. No extension of the deferral beyond 90 calendar days is possible, unless the consultation visit is "In Progress." Illinois OSHA may, however, in exercising its authority to schedule inspections, assign a lower priority to establishments where consultation visits are scheduled. See CSP 02-00-003*, Consultation Policies and Procedures Manual, Chapter 7: Relationship to Enforcement* (November 19, 2015) for additional information.

Safety and Health Achievement Recognition Program (SHARP).
SHARP is designed to provide support and incentives to those public employers that implement and continuously improve effective safety and health management system(s) at their establishment. SHARP participants are exempted from programmed planned inspections. [29 CFR 1908.7(b)(4)]. All initial approvals of SHARP status will be for a period of up to two years, commencing with the date the Regional Office approves an employer's SHARP application. After the initial approval, all SHARP renewals will be for a period of up to three years.

Deletions

Illinois OSHA will be responsible for making appropriate deletions from the programmed planned inspection (PPI) list:

- No Longer in Business or No Jurisdiction: Establishments no longer in business or not under the jurisdiction of Illinois OSHA will be removed from any PPI list prior to assignment to an inspector.

- Previous Inspection: Establishments that have had a comprehensive inspection within the last 36 months from the beginning of the current fiscal year (October 1st) will be removed from any PPI list prior to assignment to an inspector. The inspection reference date will be the inspection opening conference date. A three-layer method will be used to prevent an inspector from arriving on-site at an establishment that has received a comprehensive inspection within the last 36 months:

    1. Each establishment master list (Fire, Water/Sewer, Street) will be categorized by inspection date history based on months since the beginning of the federal fiscal year.
    2. After the Division Manager sends the Regional Enforcement Manager the raw PPI assignments, the REM will verify inspection history prior to sending individual PPI lists to inspectors.
    3. The inspector will verify inspection history for an establishment as part of their pre-inspection preparation prior to traveling to the establishment.

- SHARP Establishments: Establishments that have active SHARP status will be removed from any PPI list prior to assignment to an inspector. NOTE: certain events or incidents (e.g.

imminent danger, fatality/catastrophe, formal complaint) can trigger an Illinois OSHA enforcement inspection at SHARP sites.

Establishment Determinations

In accordance with 56 Illinois Administrative Code Part 350 Section 250(c), there are factors that determine if an establishment can include more than one physical location. Alternatively, other factors can determine if one physical location contains two or more establishments. The following methods will be used to make establishment determinations for each targeted inspected entity.

These establishment determinations also determine the proper level (establishment level) the employer should be using to maintain injury and illness records. This is critical to improving data quality submitted electronically via the federal OSHA Injury Tracking Application.

Local Fire Protection (NAICS 922160)

Fire departments and fire districts have been divided into three categories based on number of fire stations.

Category 1: Chicago Fire Department
For programmed planned inspections, the Chicago Fire Department will be inspected at the battalion level. A battalion is an organizational structure within larger fire departments that usually represents a geographical area covered by multiple stations under a battalion chief. Chicago Fire Department has 100 stations and 25 battalions. When an inspector is assigned a PPI for Chicago Fire Department it will be presented as one of the 25 battalions: Chicago Fire Department 15th Battalion, 1618 W. 33rd Pl. The address provided is the fire station where Battalion Chief 15 is located. Inspectors will inspect the stations, personnel, equipment, etc. of the 15th battalion as one inspection/establishment.

Category 2: Departments with six or more fire stations

For programmed planned inspections, these larger departments may have a geographical organizational structure like a battalion or division. When assigned a PPI for one of these departments, the inspector will determine the organizational structure of the department during the opening conference. The inspector will ask if fire stations are divided into geographical areas under a battalion, division, deputy, assistant chief, etc. If yes, the inspector will inspect the department under multiple inspections/establishments that match the fire department geographical divisions. If there are not geographical divisions, the department will be inspected under one inspection/establishment.

Example: Aurora Fire Department has nine stations. An inspector determines that Aurora Fire Department operates three battalions (Battalion 1, 2, 3) with three stations per battalion. The inspector performs three inspections, Aurora Fire Department Battalion 1, Aurora Fire Department Battalion 2, and Aurora Fire Department Battalion 3.

Example: Champaign Fire Department has six stations. An inspector determines that Champaign Fire Department operates all six stations under a single command chief. The inspector performs one inspection, Champaign Fire Department.

Category 3: All other departments

All other departments shall be inspected as one department. In unusual cases, an inspector can contact their Regional Enforcement Manager if they believe a department should be divided into two or more inspections.

NOTE: If a fire department or fire station is located within a multi-use public safety building this would be considered a physical location with two establishments: 922160 Fire Protection and 922120 Police Protection.

County/Local Road Maintenance and Construction (NAICS 237310)

The 237310 NAICS code is the proper cross reference for the 926120 NAICS code for government establishments engaged in street/highway construction and/or maintenance. The 926120 and 488XXX NAICS codes will no longer be used for PPIs. Instead, the 237310 NAICS code will be used when inspecting assigned highway/street operations. These operations may be a city, village, or township street (or streets and alleys) department, a county highway department, or road district. The following determination method will apply:

- Inspect only the highway/street maintenance and construction operations and facilities of the assigned entity. These operations may be performed under a variety of department names and the department may perform a variety of functions.

  Example: An inspector is assigned to the City of Elgin Street Department. During the opening conference the inspector determines that street maintenance is under the Department of Public Works. The inspector will limit the inspection to the operations and facilities for street maintenance.

- An inspector is assigned a large department with multiple facilities. During the opening conference the inspector determines if the facilities have separate managers. If yes, the inspector opens additional inspections. If no, the inspector inspects as one inspection. If the department has more than four separate facilities, contact the Regional Enforcement Manager for further guidance.

  Example: An inspector is assigned to DuPage County Highway Department. At the opening conference the inspector determines there are four operations yards. Each yard has a manager. The inspector would open an inspection for each yard.

  Example: An inspector is assigned to DuPage County Highway Department. At the opening conference the inspector determines there are four operations yards. All yards are managed by a single manager. The inspector would open a single inspection for the department.

Water Supply (NAICS 221310) and Sewage Treatment (NAICS 221320)

Inspectors have the potential to receive a variety of assignments under these NAICS codes. Regional Enforcement Mangers will do their best to provide inspectors with the most accurate inspection establishment name and address. Water and sewer operations fall under various levels of government. Some operations are under a city government, while others operate under a district.

Some water/sewer operations fall under one manager and some are under different management structures. The following determination method will apply:

- If assigned to inspect a "clean" system (water supply, drinking water, distribution) it will be coded as 221310.

- If assigned to inspect a "dirty" system (wastewater, sewer) it will be coded as 221320.

- If assigned a small village or district that has a combined water/sewer department (e.g. same manager and same employees), select the dominant operation and code it as one inspection with the appropriate NAICS code.

- If assigned a large district with multiple facilities, determine if the facilities have separate managers during the opening conference. If yes, open additional inspections. If no, inspect as one inspection. If the district has more than four separate facilities, contact the Regional Enforcement Manager for further guidance.

  Example: An inspector is assigned Urbana & Champaign Sanitary District. At the opening conference the inspector determines that they have a Northeast Plant and a Southwest Plant. Each plant has a manager. The inspector opens a 221320 inspection for each plant.

  Example: An inspector is assigned Urbana & Champaign Sanitary District. At the opening conference the inspector determines that they have a Northeast Plant and a Southwest Plant. Both plants are managed by a single manager. The inspector opens a single 221320 inspection for both sites.

NOTE: There is an increasing trend in Illinois to privatize water and sewer systems. Private systems have been filtered out (to the best ability) of the PPI list. If an inspector determines before or during an inspection that the operation has been privatized, they must contact their Regional Enforcement Manager to confirm jurisdiction.

Inspection Procedures

Programmed Planned Inspections
Inspections conducted under this plan will be comprehensive safety and/or health inspections.

Both Safety and Health Inspection Conducted
If both a safety and health inspection are conducted, such inspections may be conducted as one combined safety and health inspection by a cross-trained inspector (as established through specific training or demonstrated ability), or as separate safety and health inspections, or as joint safety and health inspections.

When a programmed planned inspection is assigned to a cross-trained industrial hygienist, the inspection will be a combined safety and health inspection and can be marked in the OSHA information System (OIS) as "safety and health."

Citations
Violations will be cited and penalties will be proposed in accordance with the Illinois OSHA Field Operations Manual and other applicable documents.

Recordkeeping Violations
Whenever injury and illness recordkeeping violations are identified, appropriate citations and penalties will be proposed. Supporting documentation will be provided in accordance with the Illinois OSHA Field Operations Manual.

Relationship to Other Programs

Un-Programmed Inspections
Un-programmed planned inspections will be conducted according to the Illinois OSHA Field Operations Manual and other applicable documents. If the occasion for an un-programmed (e.g., complaint, fatality) inspection arises with respect to an establishment that is also in the current inspection list to receive a programmed planned inspection, the two inspections may be conducted concurrently or separately at the discretion of the Regional Enforcement Manager.

Recording and Tracking

PPI-Only Inspections
In the OSHA Information System (OIS) under the investigation type tab the "initiating type" must be marked as "programmed planned." In addition, the "State Emphasis Program" box must be marked as "**SPPIL (State Program Planned Inspection List)**."

PPI Combined with Un-programmed Inspections.
For all un-programmed inspections conducted in conjunction with a programmed planned inspection, the OIS investigation type tab must be marked as "un-programmed" and the un-programmed activity identified. In addition, the "State Emphasis Program" box must be marked as "**SPPIL (State Program Planned Inspection List)**."

PPI Combined with Emphasis Program Inspections.
For all emphasis program inspections such as National and Local Emphasis Programs conducted in conjunction with a programmed planned inspection, the OIS investigation type tab must be marked as "programmed planned." In addition, the "State Emphasis Program" box must be marked as "**SPPIL (State Program Planned Inspection List)**" along with all NEP and LEP OSHA codes applicable to the inspection.

PPI Combined with Un-programmed and Other Programmed Inspections.
If a programmed planned inspection is combined with an un-programmed (e.g., complaint, catastrophe, or fatality) inspection and a programmed inspection, such as a NEP or LEP, the OIS investigation type tab must be marked "un-programmed."